

**TITLE 78 RECODIFICATION - TITLE 78A****CHAPTER 5**

2008 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

Title 78A, Chapter 5, Juvenile Court Act.

**Highlighted Provisions:**

This bill:

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**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****RENUMBERS AND AMENDS:**

**78A-5-101**, (Renumbered from 78-3a-101, as enacted by Laws of Utah 1996, Chapter 1)

**78A-5-102**, (Renumbered from 78-3a-102, as last amended by Laws of Utah 2006, Chapter 281)

**78A-5-103**, (Renumbered from 78-3a-104, as last amended by Laws of Utah 2006, Chapters 55, 132, and 281)

**78A-5-104**, (Renumbered from 78-3a-105, as last amended by Laws of Utah 2006, Chapters 55, and 281)

**78A-5-105**, (Renumbered from 78-3a-103, as last amended by Laws of Utah 2006, Chapters 75, 97, and 281)

**78A-5-106**, (Renumbered from 78-3a-106, as last amended by Laws of Utah 2006, Chapters 13, and 281)

**78A-5-107**, (Renumbered from 78-3a-106.5, as enacted by Laws of Utah 2006, Chapter 13)

- 32       **78A-5-108**, (Renumbered from 78-3a-109, as last amended by Laws of Utah 2006,  
33           Chapters 75, and 281)
- 34       **78A-5-109**, (Renumbered from 78-3a-110, as last amended by Laws of Utah 2006,  
35           Chapters 75, and 281)
- 36       **78A-5-110**, (Renumbered from 78-3a-111, as enacted by Laws of Utah 1997, Chapter  
37           365)
- 38       **78A-5-111**, (Renumbered from 78-3a-112, as last amended by Laws of Utah 2006,  
39           Chapter 281)
- 40       **78A-5-112**, (Renumbered from 78-3a-113, as last amended by Laws of Utah 2006,  
41           Chapter 281)
- 42       **78A-5-113**, (Renumbered from 78-3a-114, as last amended by Laws of Utah 2006,  
43           Chapter 281)
- 44       **78A-5-114**, (Renumbered from 78-3a-115, as last amended by Laws of Utah 2006,  
45           Chapter 281)
- 46       **78A-5-115**, (Renumbered from 78-3a-116, as last amended by Laws of Utah 2006,  
47           Chapters 55, and 281)
- 48       **78A-5-116**, (Renumbered from 78-3a-117, as last amended by Laws of Utah 2006,  
49           Chapter 281)
- 50       **78A-5-117**, (Renumbered from 78-3a-118, as last amended by Laws of Utah 2006,  
51           Chapters 75, and 281)
- 52       **78A-5-118**, (Renumbered from 78-3a-119, as last amended by Laws of Utah 2006,  
53           Chapter 132)
- 54       **78A-5-119**, (Renumbered from 78-3a-120, as last amended by Laws of Utah 2006,  
55           Chapter 281)
- 56       **78A-5-120**, (Renumbered from 78-3a-121, as last amended by Laws of Utah 2007,  
57           Chapter 304)
- 58       **78A-5-121**, (Renumbered from 78-3a-122, as enacted by Laws of Utah 2007, Chapter  
59           304)
- 60       **78A-5-201**, (Renumbered from 78-3a-107, as enacted by Laws of Utah 1996, Chapter  
61           1)
- 62       **78A-5-202**, (Renumbered from 78-3a-108, as enacted by Laws of Utah 1996, Chapter

63 1)  
64 **78A-5-203**, (Renumbered from 78-3a-201, as last amended by Laws of Utah 1998,  
65 Chapter 171)  
66 **78A-5-204**, (Renumbered from 78-3a-202, as enacted by Laws of Utah 1996, Chapter  
67 1)  
68 **78A-5-205**, (Renumbered from 78-3a-203, as enacted by Laws of Utah 1996, Chapter  
69 1)  
70 **78A-5-206**, (Renumbered from 78-3a-204, as enacted by Laws of Utah 1996, Chapter  
71 1)  
72 **78A-5-207**, (Renumbered from 78-3a-205, as enacted by Laws of Utah 1996, Chapter  
73 1)  
74 **78A-5-208**, (Renumbered from 78-3a-209, as last amended by Laws of Utah 2002,  
75 Fifth Special Session, Chapter 8)  
76 **78A-5-209**, (Renumbered from 78-3a-206, as last amended by Laws of Utah 2006,  
77 Chapters 77, 103, and 281)  
78 **78A-5-210**, (Renumbered from 78-3a-207, as last amended by Laws of Utah 1998,  
79 Chapter 94)  
80 **78A-5-211**, (Renumbered from 78-3a-208, as enacted by Laws of Utah 1996, Chapter  
81 1)  
82 **78A-5-301**, (Renumbered from 78-3a-301, as last amended by Laws of Utah 2007,  
83 Chapter 111)  
84 **78A-5-302**, (Renumbered from 78-3a-304.5, as last amended by Laws of Utah 2004,  
85 Chapter 356)  
86 **78A-5-303**, (Renumbered from 78-3a-305, as last amended by Laws of Utah 2006,  
87 Chapters 13, and 281)  
88 **78A-5-304**, (Renumbered from 78-3a-305.5, as enacted by Laws of Utah 2007, Chapter  
89 169)  
90 **78A-5-305**, (Renumbered from 78-3a-306, as last amended by Laws of Utah 2007,  
91 Chapter 169)  
92 **78A-5-306**, (Renumbered from 78-3a-307, as last amended by Laws of Utah 2007,

93 Chapters 169, and 255)  
94 **78A-5-307**, (Renumbered from 78-3a-307.1, as last amended by Laws of Utah 2007,  
95 Chapter 152)  
96 **78A-5-308**, (Renumbered from 78-3a-308, as last amended by Laws of Utah 2006,  
97 Chapter 13)  
98 **78A-5-309**, (Renumbered from 78-3a-309, as last amended by Laws of Utah 2006,  
99 Chapter 281)  
100 **78A-5-310**, (Renumbered from 78-3a-310, as last amended by Laws of Utah 2001,  
101 Chapter 21)  
102 **78A-5-311**, (Renumbered from 78-3a-311, as last amended by Laws of Utah 2006,  
103 Chapters 75, and 97)  
104 **78A-5-312**, (Renumbered from 78-3a-311.5, as last amended by Laws of Utah 2005,  
105 Chapter 286)  
106 **78A-5-313**, (Renumbered from 78-3a-312, as last amended by Laws of Utah 2007,  
107 Chapters 152, and 169)  
108 **78A-5-314**, (Renumbered from 78-3a-313, as last amended by Laws of Utah 1998,  
109 Chapters 68, and 171)  
110 **78A-5-315**, (Renumbered from 78-3a-313.5, as last amended by Laws of Utah 2006,  
111 Chapter 281)  
112 **78A-5-316**, (Renumbered from 78-3a-314, as last amended by Laws of Utah 2007,  
113 Chapter 152)  
114 **78A-5-317**, (Renumbered from 78-3a-315, as last amended by Laws of Utah 2002,  
115 Chapter 306)  
116 **78A-5-318**, (Renumbered from 78-3a-316, as enacted by Laws of Utah 1995, Chapter  
117 302)  
118 **78A-5-319**, (Renumbered from 78-3a-316.1, as last amended by Laws of Utah 2006,  
119 Chapter 281)  
120 **78A-5-320**, (Renumbered from 78-3a-318, as enacted by Laws of Utah 1996, Chapter 1  
121 and last amended by Laws of Utah 1996, Chapter 318)  
122 **78A-5-321**, (Renumbered from 78-3a-319, as enacted by Laws of Utah 1996, Chapter 1  
123 and last amended by Laws of Utah 1996, Chapter 318)

124       **78A-5-322**, (Renumbered from 78-3a-320, as last amended by Laws of Utah 2006,  
125           Chapter 77)  
126       **78A-5-323**, (Renumbered from 78-3a-321, as last amended by Laws of Utah 2006,  
127           Chapter 281)  
128       **78A-5-401**, (Renumbered from 78-3a-350, as last amended by Laws of Utah 2006,  
129           Chapter 281)  
130       **78A-5-501**, (Renumbered from 78-3a-401, as renumbered and amended by Laws of  
131           Utah 1994, Chapter 260)  
132       **78A-5-502**, (Renumbered from 78-3a-403, as last amended by Laws of Utah 1996,  
133           Chapter 318)  
134       **78A-5-503**, (Renumbered from 78-3a-402, as renumbered and amended by Laws of  
135           Utah 1994, Chapter 260)  
136       **78A-5-504**, (Renumbered from 78-3a-404, as last amended by Laws of Utah 1997,  
137           Chapters 195, and 329)  
138       **78A-5-505**, (Renumbered from 78-3a-405, as renumbered and amended by Laws of  
139           Utah 1994, Chapter 260)  
140       **78A-5-506**, (Renumbered from 78-3a-406, as last amended by Laws of Utah 2003,  
141           Chapter 332)  
142       **78A-5-507**, (Renumbered from 78-3a-407, as last amended by Laws of Utah 2006,  
143           Chapter 281)  
144       **78A-5-508**, (Renumbered from 78-3a-408, as last amended by Laws of Utah 2005,  
145           Chapter 95)  
146       **78A-5-509**, (Renumbered from 78-3a-409, as last amended by Laws of Utah 2001,  
147           Chapter 255)  
148       **78A-5-510**, (Renumbered from 78-3a-410, as renumbered and amended by Laws of  
149           Utah 1994, Chapter 260)  
150       **78A-5-511**, (Renumbered from 78-3a-411, as last amended by Laws of Utah 1997,  
151           Chapter 365)  
152       **78A-5-512**, (Renumbered from 78-3a-412, as renumbered and amended by Laws of  
153           Utah 1994, Chapter 260)

154       **78A-5-513**, (Renumbered from 78-3a-413, as renumbered and amended by Laws of  
155           Utah 1994, Chapter 260)  
156       **78A-5-514**, (Renumbered from 78-3a-414, as last amended by Laws of Utah 2001,  
157           Chapter 101)  
158       **78A-5-515**, (Renumbered from 78-3a-415, as last amended by Laws of Utah 2006,  
159           Chapter 281)  
160       **78A-5-601**, (Renumbered from 78-3a-501, as enacted by Laws of Utah 1996, Chapter  
161           1)  
162       **78A-5-602**, (Renumbered from 78-3a-502, as last amended by Laws of Utah 2006,  
163           Chapters 55, and 281)  
164       **78A-5-603**, (Renumbered from 78-3a-503, as last amended by Laws of Utah 2006,  
165           Chapter 281)  
166       **78A-5-604**, (Renumbered from 78-3a-504, as last amended by Laws of Utah 2005,  
167           Chapter 156)  
168       **78A-5-605**, (Renumbered from 78-3a-505, as repealed and reenacted by Laws of Utah  
169           1997, Chapter 365)  
170       **78A-5-606**, (Renumbered from 78-3a-506, as last amended by Laws of Utah 2007,  
171           Chapter 284)  
172       **78A-5-701**, (Renumbered from 78-3a-601, as last amended by Laws of Utah 2003,  
173           Chapter 171)  
174       **78A-5-702**, (Renumbered from 78-3a-602, as last amended by Laws of Utah 2006,  
175           Chapter 281)  
176       **78A-5-703**, (Renumbered from 78-3a-603, as last amended by Laws of Utah 2003,  
177           Chapter 171)  
178       **78A-5-704**, (Renumbered from 78-3a-604, as enacted by Laws of Utah 2005, Chapter  
179           106)  
180       **78A-5-801**, (Renumbered from 78-3a-1001, as enacted by Laws of Utah 2006, Chapter  
181           132)  
182       **78A-5-802**, (Renumbered from 78-3a-1002, as enacted by Laws of Utah 2006, Chapter  
183           132)  
184       **78A-5-803**, (Renumbered from 78-3a-1003, as enacted by Laws of Utah 2006, Chapter

185 132)  
186 **78A-5-804**, (Renumbered from 78-3a-1004, as enacted by Laws of Utah 2006, Chapter  
187 132)  
188 **78A-5-805**, (Renumbered from 78-3a-1005, as enacted by Laws of Utah 2006, Chapter  
189 132)  
190 **78A-5-901**, (Renumbered from 78-3a-911, as last amended by Laws of Utah 2006,  
191 Chapter 281)  
192 **78A-5-902**, (Renumbered from 78-3a-912, as last amended by Laws of Utah 2006,  
193 Chapter 281)  
194 **78A-5-1001**, (Renumbered from 78-3a-801, as last amended by Laws of Utah 2007,  
195 Chapter 81)  
196 **78A-5-1002**, (Renumbered from 78-3a-802, as repealed and reenacted by Laws of Utah  
197 1999, Chapter 249)  
198 **78A-5-1004**, (Renumbered from 78-3a-804, as enacted by Laws of Utah 1996, Chapter  
199 1)  
200 **78A-5-1101**, (Renumbered from 78-3a-901, as last amended by Laws of Utah 1997,  
201 Chapter 358)  
202 **78A-5-1102**, (Renumbered from 78-3a-902, as enacted by Laws of Utah 1996, Chapter  
203 1)  
204 **78A-5-1103**, (Renumbered from 78-3a-903, as last amended by Laws of Utah 2006,  
205 Chapter 281)  
206 **78A-5-1104**, (Renumbered from 78-3a-904, as last amended by Laws of Utah 2006,  
207 Chapter 281)  
208 **78A-5-1105**, (Renumbered from 78-3a-905, as last amended by Laws of Utah 2007,  
209 Chapter 304)  
210 **78A-5-1106**, (Renumbered from 78-3a-906, as last amended by Laws of Utah 2006,  
211 Chapter 281)  
212 **78A-5-1107**, (Renumbered from 78-3a-907, as enacted by Laws of Utah 1996, Chapter  
213 1)  
214 **78A-5-1108**, (Renumbered from 78-3a-908, as last amended by Laws of Utah 2006,

215 Chapter 281)  
216 **78A-5-1109**, (Renumbered from 78-3a-909, as last amended by Laws of Utah 2006,  
217 Chapter 281)  
218 **78A-5-1110**, (Renumbered from 78-3a-910, as last amended by Laws of Utah 2002,  
219 Fifth Special Session, Chapter 8)  
220 **78A-5-1111**, (Renumbered from 78-3a-913, as last amended by Laws of Utah 2006,  
221 Chapter 281)  
222 **78A-5-1112**, (Renumbered from 78-3a-914, as last amended by Laws of Utah 2003,  
223 Chapter 171)  
224 **78A-5-1201**, (Renumbered from 78-57-101, as enacted by Laws of Utah 1999, Chapter  
225 94)  
226 **78A-5-1202**, (Renumbered from 78-57-102, as last amended by Laws of Utah 2005,  
227 Chapter 2)  
228 **78A-5-1203**, (Renumbered from 78-57-103, as last amended by Laws of Utah 2002,  
229 Chapter 188)  
230 **78A-5-1204**, (Renumbered from 78-57-104, as enacted by Laws of Utah 1999, Chapter  
231 94)  
232 **78A-5-1205**, (Renumbered from 78-57-105, as enacted by Laws of Utah 1999, Chapter  
233 94)  
234 **78A-5-1206**, (Renumbered from 78-57-106, as enacted by Laws of Utah 1999, Chapter  
235 94)  
236 **78A-5-1207**, (Renumbered from 78-57-107, as enacted by Laws of Utah 1999, Chapter  
237 94)  
238 **78A-5-1208**, (Renumbered from 78-57-108, as enacted by Laws of Utah 1999, Chapter  
239 94)  
240 **78A-5-1209**, (Renumbered from 78-57-109, as enacted by Laws of Utah 1999, Chapter  
241 94)

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243 *Be it enacted by the Legislature of the state of Utah:*

244 Section 1. Section **78A-5-101**, which is renumbered from Section 78-3a-101 is  
245 renumbered and amended to read:



246 **CHAPTER 5. JUVENILE COURT ACT OF 1996**247 **~~[78-3a-101].~~ 78A-5-101. Title.**

248 This chapter is known as the "Juvenile Court Act of 1996."

249 Section 2. Section **78A-5-102**, which is renumbered from Section 78-3a-102 is  
250 renumbered and amended to read:251 **~~[78-3a-102].~~ 78A-5-102. Establishment of juvenile court -- Organization**  
252 **and status of court -- Purpose.**

253 (1) There is established for the state a juvenile court.

254 (2) The juvenile court is a court of record. It shall have a seal, and its judges, clerks,  
255 and referees have the power to administer oaths and affirmations.

256 (3) The juvenile court is of equal status with the district courts of the state.

257 (4) The juvenile court is established as a forum for the resolution of all matters  
258 properly brought before it, consistent with applicable constitutional and statutory requirements  
259 of due process.

260 (5) The purpose of the court under this chapter is to:

261 (a) promote public safety and individual accountability by the imposition of  
262 appropriate sanctions on persons who have committed acts in violation of law;263 (b) order appropriate measures to promote guidance and control, preferably in the  
264 minor's own home, as an aid in the prevention of future unlawful conduct and the development  
265 of responsible citizenship;266 (c) where appropriate, order rehabilitation, reeducation, and treatment for persons who  
267 have committed acts bringing them within the court's jurisdiction;268 (d) adjudicate matters that relate to minors who are beyond parental or adult control  
269 and to establish appropriate authority over these minors by means of placement and control  
270 orders;271 (e) adjudicate matters that relate to abused, neglected, and dependent children and to  
272 provide care and protection for minors by placement, protection, and custody orders;273 (f) remove a minor from parental custody only where the minor's safety or welfare, or  
274 the public safety, may not otherwise be adequately safeguarded; and275 (g) consistent with the ends of justice, act in the best interests of the minor in all cases  
276 and preserve and strengthen family ties.

Section 3. Section **78A-5-103**, which is renumbered from Section 78-3a-104 is renumbered and amended to read:

~~[78-3a-104].~~            **78A-5-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding traffic laws and boating and ordinances;

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section ~~[78-3a-103]~~ **78A-5-105**;

(d) a protective order for a child pursuant to the provisions of Title ~~[78]~~ **78B**, Chapter ~~[3h]~~ **7**, **Part 2**, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title ~~[30]~~ **78B**, Chapter ~~[6]~~ **7**, **Part 1**, Cohabitant Abuse Act, or Title ~~[78]~~ **78B**, Chapter ~~[45g]~~ **13**, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

(e) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the emancipation of a minor in accordance with Part ~~[10]~~ **8**, Emancipation;

(g) the termination of the legal parent-child relationship in accordance with Part ~~[4]~~ **5**, Termination of Parental Rights Act, including termination of residual parental rights and

308 duties;

309 (h) the treatment or commitment of a mentally retarded minor;

310 (i) a minor who is a habitual truant from school;

311 (j) the judicial consent to the marriage of a child under age 16 upon a determination of

312 voluntariness or where otherwise required by law, employment, or enlistment of a child when

313 consent is required by law;

314 (k) any parent or parents of a child committed to a secure youth corrections facility, to

315 order, at the discretion of the court and on the recommendation of a secure facility, the parent

316 or parents of a child committed to a secure facility for a custodial term, to undergo group

317 rehabilitation therapy under the direction of a secure facility therapist, who has supervision of

318 that parent's or parents' child, or any other therapist the court may direct, for a period directed

319 by the court as recommended by a secure facility;

320 (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

321 (m) the treatment or commitment of a mentally ill child. The court may commit a child

322 to the physical custody of a local mental health authority in accordance with the procedures and

323 requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to

324 Division of Substance Abuse and Mental Health. The court may not commit a child directly to

325 the Utah State Hospital;

326 (n) the commitment of a child in accordance with Section 62A-15-301;

327 (o) de novo review of final agency actions resulting from an informal adjudicative

328 proceeding as provided in Section 63-46b-15; and

329 (p) adoptions conducted in accordance with the procedures described in Title ~~[78]~~ 78B,

330 Chapter ~~[30]~~ 6, Part 1, Adoption, when the juvenile court has previously entered an order

331 terminating the rights of a parent and finds that adoption is in the best interest of the child.

332 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive

333 jurisdiction over any traffic or boating offense committed by a person under 16 years of age

334 and concurrent jurisdiction over all other traffic or boating offenses committed by a person 16

335 years of age or older, except that the court shall have exclusive jurisdiction over the following

336 offenses committed by a child:

337 (a) Section 76-5-207, automobile homicide;

338 (b) Section 41-6a-502, operating a vehicle while under the influence of alcohol or

339 drugs;

340 (c) Section 41-6a-528, reckless driving or Section 73-18-12, reckless operation;

341 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or

342 semitrailer for an extended period of time; and

343 (e) Section 41-6a-210 or 73-18-20, fleeing a peace officer.

344 (3) The court also has jurisdiction over traffic and boating offenses that are part of a  
345 single criminal episode filed in a petition that contains an offense over which the court has  
346 jurisdiction.

347 (4) The juvenile court has jurisdiction over an ungovernable or runaway child who is  
348 referred to it by the Division of Child and Family Services or by public or private agencies that  
349 contract with the division to provide services to that child where, despite earnest and persistent  
350 efforts by the division or agency, the child has demonstrated that the child:

351 (a) is beyond the control of the child's parent, guardian, lawful custodian, or school  
352 authorities to the extent that the child's behavior or condition endangers the child's own welfare  
353 or the welfare of others; or

354 (b) has run away from home.

355 (5) This section does not restrict the right of access to the juvenile court by private  
356 agencies or other persons.

357 (6) The juvenile court has jurisdiction of all magistrate functions relative to cases  
358 arising under Section ~~[78-3a-602]~~ 78A-5-702.

359 (7) The juvenile court has jurisdiction to make a finding of substantiated,  
360 unsubstantiated, or without merit, in accordance with Section ~~[78-3a-320]~~ 78A-5-322.

361 Section 4. Section **78A-5-104**, which is renumbered from Section 78-3a-105 is  
362 renumbered and amended to read:

363 ~~[78-3a-105]~~. **78A-5-104. Concurrent jurisdiction -- District court and**  
364 **juvenile court.**

365 (1) The district court or other court has concurrent jurisdiction with the juvenile court  
366 as follows:

367 (a) when a person who is 18 years of age or older and who is under the continuing  
368 jurisdiction of the juvenile court under Section ~~[78-3a-118]~~ 78A-5-117 violates any federal,  
369 state, or local law or municipal ordinance; and

(b) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title [78] 78B, Chapter [45g] 13, Utah Uniform Parentage Act, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part [4] 5, Termination of Parental Rights Act.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) This section does not deprive the district court of jurisdiction to appoint a guardian for a child, or to determine the support, custody, and parent-time of a child upon writ of habeas corpus or when the question of support, custody, and parent-time is incidental to the determination of a cause in the district court.

(4) (a) Where a support, custody, or parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same child if the child is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section [78-3a-104] 78A-5-103.

(b) The juvenile court may, by order, change the custody, subject to Subsection 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(c) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

(5) The juvenile court has jurisdiction over questions of custody, support, and parent-time, of a minor who comes within the court's jurisdiction under this section or Section [78-3a-104] 78A-5-103.

Section 5. Section **78A-5-105**, which is renumbered from Section 78-3a-103 is renumbered and amended to read:

**[78-3a-103].            78A-5-105. Definitions.**

(1) As used in this chapter:

(a) "Abused child" includes a child who:

- 401 (i) has suffered or been threatened with nonaccidental physical or mental harm,  
402 negligent treatment, or sexual exploitation; or
- 403 (ii) has been the victim of any sexual abuse.
- 404 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts  
405 alleged in the petition have been proved.
- 406 (c) "Adult" means a person 18 years of age or over, except that a person 18 years or  
407 over under the continuing jurisdiction of the juvenile court pursuant to Section ~~[78-3a-121]~~  
408 78A-5-120 shall be referred to as a minor.
- 409 (d) "Board" means the Board of Juvenile Court Judges.
- 410 (e) "Child" means a person under 18 years of age.
- 411 (f) "Child placement agency" means:
- 412 (i) a private agency licensed to receive a child for placement or adoption under this  
413 code; or
- 414 (ii) a private agency that receives a child for placement or adoption in another state,  
415 which agency is licensed or approved where such license or approval is required by law.
- 416 (g) "Clandestine laboratory operation" is as defined in Section 58-37d-3.
- 417 (h) "Commit" means, unless specified otherwise:
- 418 (i) with respect to a child, to transfer legal custody; and
- 419 (ii) with respect to a minor who is at least 18 years of age, to transfer custody.
- 420 (i) "Court" means the juvenile court.
- 421 (j) "Dependent child" includes a child who is homeless or without proper care through  
422 no fault of the child's parent, guardian, or custodian.
- 423 (k) "Deprivation of custody" means transfer of legal custody by the court from a parent  
424 or the parents or a previous legal custodian to another person, agency, or institution.
- 425 (l) "Detention" means home detention and secure detention as defined in Section  
426 62A-7-101 for the temporary care of a minor who requires secure custody in a physically  
427 restricting facility:
- 428 (i) pending court disposition or transfer to another jurisdiction; or
- 429 (ii) while under the continuing jurisdiction of the court.
- 430 (m) "Division" means the Division of Child and Family Services.
- 431 (n) "Formal referral" means a written report from a peace officer or other person

informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(o) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(p) "Guardianship of the person" includes the authority to consent to:

(i) marriage;

(ii) enlistment in the armed forces;

(iii) major medical, surgical, or psychiatric treatment; or

(iv) legal custody, if legal custody is not vested in another person, agency, or institution.

(q) "Habitual truant" is as defined in Section 53A-11-101.

(r) "Legal custody" means a relationship embodying the following rights and duties:

(i) the right to physical custody of the minor;

(ii) the right and duty to protect, train, and discipline the minor;

(iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(iv) the right to determine where and with whom the minor shall live; and

(v) the right, in an emergency, to authorize surgery or other extraordinary care.

(s) "Minor" means:

(i) a child; or

(ii) a person who is:

(A) at least 18 years of age and younger than 21 years of age; and

(B) under the jurisdiction of the juvenile court.

(t) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(u) (i) "Neglected child" means a child:

(A) whose parent, guardian, or custodian has abandoned the child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(B) whose parent, guardian, or custodian has subjected the child to mistreatment or abuse;

(C) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for health, safety, morals, or well-being;

(E) who is at risk of being a neglected or abused child as defined in this chapter because another child in the same home is a neglected or abused child as defined in this chapter; or

(F) whose parent permits the minor to reside, on a permanent or temporary basis, at the location of a clandestine laboratory operation.

(ii) The aspect of neglect related to education, described in Subsection (1)(u)(i)(D), means that, after receiving notice that a child has been frequently absent from school without good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(iv) Notwithstanding Subsection (1)(u)(i), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(v) Nothing in Subsection (1)(u)(iv) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(v) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(i) the assigned probation officer; and

(ii) (A) the minor; or

(B) the minor and the minor's parent, legal guardian, or custodian.

(w) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section ~~[78-3a-104]~~ 78A-5-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under



supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(x) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(y) (i) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(A) the responsibility for support;

(B) the right to consent to adoption;

(C) the right to determine the child's religious affiliation; and

(D) the right to reasonable parent-time unless restricted by the court.

(ii) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

(A) marriage;

(B) enlistment; and

(C) major medical, surgical, or psychiatric treatment.

(z) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(aa) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(bb) "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(cc) "Substantiated" is as defined in Section 62A-4a-101.

(dd) "Supported" is as defined in Section 62A-4a-101.

(ee) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(ff) "Therapist" means:

(i) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(ii) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(gg) "Unsubstantiated" is as defined in Section 62A-4a-101.

(hh) "Without merit" is as defined in Section 62A-4a-101.

(2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the Division of Child and Family Services:

(a) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(b) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from home until the earlier of:

(i) the shelter hearing; or

(ii) the child's return home.

(c) "Temporary custody" means the custody of a child in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Section 6. Section **78A-5-106**, which is renumbered from Section 78-3a-106 is renumbered and amended to read:

**~~[78-3a-106].~~        78A-5-106. Search warrants and subpoenas -- Authority to issue -- Protective custody -- Expedited hearing.**

(1) The court has authority to issue search warrants, subpoenas, or investigative subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial courts in the state.

(2) A peace officer or child welfare worker may not enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless:

(a) there exist exigent circumstances sufficient to relieve the peace officer or child welfare worker of the requirement to obtain a warrant;

(b) the peace officer or child welfare worker obtains a search warrant under Subsection

556 (3);

557 (c) the peace officer or child welfare worker obtains a court order after the parent or  
558 guardian of the child is given notice and an opportunity to be heard; or

559 (d) the peace officer or child welfare worker obtains the consent of the child's parent or  
560 guardian.

561 (3) (a) The court may issue a warrant authorizing a child protective services worker or  
562 peace officer to search for a child and take the child into protective custody if it appears to the  
563 court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace  
564 officer or any other person, and upon the examination of other witnesses, if required by the  
565 judge, that there is probable cause to believe that:

566 (i) there is a threat of substantial harm to the child's health or safety;

567 (ii) it is necessary to take the child into protective custody to avoid the harm described  
568 in Subsection (3)(a)(i); and

569 (iii) it is likely that the child will suffer substantial harm if the parent or guardian of the  
570 child is given notice and an opportunity to be heard before the child is taken into protective  
571 custody.

572 (b) Pursuant to Section 77-23-210, a peace officer making the search may enter a house  
573 or premises by force, if necessary, in order to remove the child.

574 (c) The person executing the warrant shall then take the child to the place of shelter  
575 designated by the court or the division.

576 (4) (a) Consistent with Subsection (5), the court shall hold an expedited hearing to  
577 determine whether a child should be placed in protective custody if:

578 (i) a person files a petition under Section ~~[78-3a-305]~~ 78A-5-303;

579 (ii) a party to the proceeding files a "Motion for Expedited Placement in Temporary  
580 Custody"; and

581 (iii) notice of the hearing described in this Subsection (4)(a) is served consistent with  
582 the requirements for notice of a shelter hearing under Section ~~[78-3a-306]~~ 78A-5-305.

583 (b) The hearing described in Subsection (4)(a):

584 (i) shall be held within 72 hours, excluding weekends and holidays, of the filing of the  
585 motion described in Subsection (4)(a)(ii); and

586 (ii) shall be considered a shelter hearing under Section ~~[78-3a-306]~~ 78A-5-305 and

587 Utah Rules of Juvenile Procedure, Rule 13.

588 (5) (a) The hearing and notice described in Subsection (4) are subject to:

589 (i) Section [~~78-3a-306~~] 78A-5-305;

590 (ii) Section [~~78-3a-307~~] 78A-5-306; and

591 (iii) the Utah Rules of Juvenile Procedure.

592 (b) After the hearing described in Subsection (4), a court may order a child placed in  
593 the temporary custody of the division.

594 (6) When notice to a parent or guardian is required by this section:

595 (a) the parent or guardian to be notified must be:

596 (i) the child's primary caregiver; or

597 (ii) the parent or guardian who has custody of the child, when the order is sought; and

598 (b) the person required to provide notice shall make a good faith effort to provide  
599 notice to a parent or guardian who:

600 (i) is not required to be notified under Subsection (6)(a); and

601 (ii) has the right to parent-time with the child.

602 Section 7. Section **78A-5-107**, which is renumbered from Section 78-3a-106.5 is  
603 renumbered and amended to read:

604 [~~78-3a-106.5~~]. **78A-5-107. Expedited filing of petition -- Expedited**  
605 **hearings.**

606 (1) For purposes of this section, "petition" means a petition, under Section [~~78-3a-305~~]  
607 78A-5-303, to commence proceedings in a juvenile court alleging that a child is:

608 (a) abused;

609 (b) neglected; or

610 (c) dependent.

611 (2) If a petition is requested by the division, the attorney general shall file the petition  
612 within 72 hours of the completion of the division's investigation and request, excluding  
613 weekends and holidays, if:

614 (a) the child who is the subject of the requested petition is not removed from the child's  
615 home by the division; and

616 (b) without an expedited hearing and services ordered under the protective supervision  
617 of the court, the child will likely be taken into protective custody.

(3) The court shall give scheduling priority to the pretrial and adjudication hearings on a petition if:

(a) the child who is the subject of the petition is not in:

(i) protective custody; or

(ii) temporary custody; and

(b) the division indicates in the petition that, without expedited hearings and services ordered under the protective supervision of the court, the child will likely be taken into protective custody.

Section 8. Section **78A-5-108**, which is renumbered from Section 78-3a-109 is renumbered and amended to read:

~~[78-3a-109].~~            **78A-5-108.**    **Title of petition and other court documents -- Form and contents of petition -- Order for temporary custody or protective services -- Physical or psychological examination of minor, parent, or guardian -- Dismissal of petition.**

(1) The petition and all subsequent court documents in the proceeding shall be entitled: "State of Utah, in the interest of....., a person under 18 years of age (or a person under 21 years of age)."

(2) The petition shall be verified and statements in the petition may be made upon information and belief.

(3) The petition shall be written in simple and brief language and include the facts which bring the minor within the jurisdiction of the court, as provided in Section ~~[78-3a-104]~~ **78A-5-103.**

(4) The petition shall further state:

(a) the name, age, and residence of the minor;

(b) the names and residences of the minor's parents;

(c) the name and residence of the guardian, if there is one;

(d) the name and address of the nearest known relative, if no parent or guardian of a minor is known; and

(e) the name and residence of the person having physical custody of the minor. If any of the facts required are not known by the petitioner, the petition shall so state.

(5) At any time after a petition is filed, the court may make an order:

(a) providing for temporary custody of the minor; or

(b) that the Division of Child and Family Services provide protective services to the child, if the court determines that:

(i) the child is at risk of being removed from the child's home due to abuse or neglect;

and

(ii) the provision of protective services may make the removal described in Subsection (5)(b)(i) unnecessary.

(6) The court may order that a minor concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a hospital or other facility for examination. After notice and a hearing set for the specific purpose, the court may order a similar examination of a parent or guardian whose ability to care for a minor is at issue, if the court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the minor.

(7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted pursuant to Subsection (6) are not privileged communications, but are exempt from the general rule of privilege.

(8) The court may dismiss a petition at any stage of the proceedings.

(9) If the petition is filed under Section ~~[78-3a-305]~~ 78A-5-303 or ~~[78-3a-405]~~ 78A-5-505 or if the matter is referred to the court under Subsection ~~[78-3a-105]~~ 78A-5-105(5), the court may require the parties to participate in mediation in accordance with Title ~~[78]~~ 78B, Chapter ~~[31b]~~ 6, Part 2, Alternative Dispute Resolution.

Section 9. Section **78A-5-109**, which is renumbered from Section 78-3a-110 is renumbered and amended to read:

~~[78-3a-110]~~. **78A-5-109. Summons -- Service and process -- Issuance and contents -- Notice to absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory process for attendance of witnesses when authorized.**

(1) After a petition is filed the court shall promptly issue a summons, unless the judge directs that a further investigation is needed. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the clerk of the court at or prior to the hearing.

(2) The summons shall contain:

(a) the name of the court;

(b) the title of the proceedings; and

(c) except for a published summons, a brief statement of the substance of the allegations in the petition.

(3) A published summons shall state:

(a) that a proceeding concerning the minor is pending in the court; and

(b) an adjudication will be made.

(4) The summons shall require the person or persons who have physical custody of the minor to appear personally and bring the minor before the court at a time and place stated. If the person or persons summoned are not the parent, parents, or guardian of the minor, the summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying them of the pendency of the case and of the time and place set for the hearing.

(5) Summons may be issued requiring the appearance of any other person whose presence the court finds necessary.

(6) If it appears to the court that the welfare of the minor or of the public requires that the minor be taken into custody, the court may by endorsement upon the summons direct that the person serving the summons take the minor into custody at once.

(7) Subject to Subsection ~~[78-3a-118]~~ 78A-5-117(2)(n)(iii), upon the sworn testimony of one or more reputable physicians, the court may order emergency medical or surgical treatment that is immediately necessary for a minor concerning whom a petition has been filed pending the service of summons upon the minor's parents, guardian, or custodian.

(8) A parent or guardian is entitled to the issuance of compulsory process for the attendance of witnesses on the parent's or guardian's own behalf or on behalf of the minor. A guardian ad litem or a probation officer is entitled to compulsory process for the attendance of witnesses on behalf of the minor.

(9) Service of summons and process and proof of service shall be made in the manner provided in the Utah Rules of Civil Procedure.

(10) Service of summons or process shall be made by the sheriff of the county where the service is to be made, or by his deputy; but upon request of the court service shall be made by any other peace officer, or by another suitable person selected by the court.

(11) Service of summons in the state shall be made personally, by delivering a copy to the person summoned; provided, however, that parents of a minor living together at their usual place of abode may both be served by personal delivery to either parent of copies of the summons, one copy for each parent.

(12) If the judge makes a written finding that he has reason to believe that personal service of the summons will be unsuccessful, or will not accomplish notification within a reasonable time after issuance of the summons, he may order service by registered mail, with a return receipt to be signed by the addressee only, to be addressed to the last-known address of the person to be served in the state. Service shall be complete upon return to the court of the signed receipt.

(13) If the parents, parent, or guardian required to be summoned under Subsection (4) cannot be found within the state, the fact of their minor's presence within the state shall confer jurisdiction on the court in proceedings in a minor's case under this chapter as to any absent parent or guardian, provided that due notice has been given in the following manner:

(a) If the address of the parent or guardian is known, due notice is given by sending him a copy of the summons by registered mail with a return receipt to be signed by the addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil Procedure. Service by registered mail shall be complete upon return to the court of the signed receipt.

(b) If the address or whereabouts of the parent or guardian outside the state cannot after diligent inquiry be ascertained, due notice is given by publishing a summons in a newspaper having general circulation in the county in which the proceeding is pending. The summons shall be published once a week for four successive weeks. Service shall be complete on the day of the last publication.

(c) Service of summons as provided in this subsection shall vest the court with jurisdiction over the parent or guardian served in the same manner and to the same extent as if the person served was served personally within the state.

(14) In the case of service in the state, service completed not less than 48 hours before the time set in the summons for the appearance of the person served, shall be sufficient to confer jurisdiction. In the case of service outside the state, service completed not less than five days before the time set in the summons for appearance of the person served, shall be sufficient



to confer jurisdiction.

(15) Computation of periods of time under this chapter shall be made in accordance with the Utah Rules of Civil Procedure.

Section 10. Section **78A-5-110**, which is renumbered from Section 78-3a-111 is renumbered and amended to read:

~~[78-3a-111].~~        **78A-5-110. Venue -- Transfer or certification to other districts -- Dismissal without adjudication on merits.**

(1) Proceedings in minor's cases shall be commenced in the court of the district in which the minor is living or is found, or in which an alleged violation of law or ordinance occurred.

(2) After the filing of a petition, the court may transfer the case to the district where the minor resides or to the district where the violation of law or ordinance is alleged to have occurred. The court may, in its discretion, after adjudication certify the case for disposition to the court of the district in which the minor resides.

(3) The transferring or certifying court shall transmit all documents and legal and social records, or certified copies to the receiving court, and the receiving court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in that court.

(4) The dismissal of a petition in one district where the dismissal is without prejudice and where there has been no adjudication upon the merits shall not preclude refile within the same district or another district where there is venue of the case.

Section 11. Section **78A-5-111**, which is renumbered from Section 78-3a-112 is renumbered and amended to read:

~~[78-3a-112].~~        **78A-5-111. Appearances -- Parents, guardian, or legal custodian to appear with minor or child -- Failure to appear -- Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off -- Appointment of guardian ad litem.**

(1) Any person required to appear who, without reasonable cause, fails to appear may be proceeded against for contempt of court, and the court may cause a bench warrant to issue to produce the person in court.

(2) In all cases when a minor is required to appear in court, the parents, guardian, or

other person with legal custody of the minor shall appear with the minor unless excused by the judge.

(a) An employee may request permission to leave the workplace for the purpose of attending court if the employee has been notified by the juvenile court that his minor is required to appear before the court.

(b) An employer must grant permission to leave the workplace with or without pay if the employee has requested permission at least seven days in advance or within 24 hours of the employee receiving notice of the hearing.

(3) If a parent or other person who signed a written promise to appear and bring the child to court under Section ~~[78-3a-113]~~ 78A-5-112 or ~~[78-3a-114]~~ 78A-5-113 fails to appear and bring the child to court on the date set in the promise, or, if the date was to be set, after notification by the court, a warrant may be issued for the apprehension of that person or the child, or both.

(4) Willful failure to perform the promise is a misdemeanor if, at the time of the execution of the promise, the promisor is given a copy of the promise which clearly states that failure to appear and have the child appear as promised is a misdemeanor. The juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part ~~[8]~~ 10, Adult Offenses.

(5) The court shall endeavor, through use of the warrant of arrest if necessary, as provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or both parents or of the guardian of a child. If neither a parent nor guardian is present at the court proceedings, the court may appoint a guardian ad litem to protect the interest of a minor. A guardian ad litem may also be appointed whenever necessary for the welfare of a minor, whether or not a parent or guardian is present.

(6) A warrant may be issued for a parent, a guardian, a custodian, or a minor if:

(a) a summons is issued but cannot be served;

(b) it is made to appear to the court that the person to be served will not obey the summons;

(c) serving the summons will be ineffectual; or

(d) the welfare of the minor requires that he be brought immediately into the custody of the court.

Section 12. Section **78A-5-112**, which is renumbered from Section 78-3a-113 is renumbered and amended to read:

~~[78-3a-113].~~        **78A-5-112. Minor taken into custody by peace officer, private citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer to take adult into custody.**

(1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance;

(b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony;

(c) the minor:

(i) (A) is seriously endangered in the minor's surroundings; or

(B) seriously endangers others; and

(ii) immediate removal appears to be necessary for the minor's protection or the protection of others;

(d) there are reasonable grounds to believe the minor has run away or escaped from the minor's parents, guardian, or custodian; or

(e) there is reason to believe that the minor is:

(i) subject to the state's compulsory education law; and

(ii) absent from school without legitimate or valid excuse, subject to Section 53A-11-105.

(2) (a) A private citizen or a probation officer may take a minor into custody if under the circumstances he could make a citizen's arrest if the minor was an adult.

(b) A probation officer may also take a minor into custody under Subsection (1) or if the minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of the juvenile court or in emergency situations in which a peace officer is not immediately available.

(3) (a) (i) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, guardian, or custodian.

(ii) The minor shall then be released to the care of the minor's parent or other responsible adult, unless the minor's immediate welfare or the protection of the community

requires the minor's detention.

(b) If the minor is taken into custody or detention for a violent felony, as defined in Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the officer or other law enforcement agent taking the minor into custody shall, as soon as practicable or as established under Subsection 53A-11-1001(2), notify the school superintendent of the district in which the minor resides or attends school for the purposes of the minor's supervision and student safety.

(i) The notice shall disclose only:

(A) the name of the minor;

(B) the offense for which the minor was taken into custody or detention; and

(C) if available, the name of the victim, if the victim:

(I) resides in the same school district as the minor; or

(II) attends the same school as the minor.

(ii) The notice shall be classified as a protected record under Section 63-2-304.

(iii) All other records disclosures are governed by Title 63, Chapter 2, Government Records Access and Management Act and the Federal Family Educational Rights and Privacy Act.

(c) Employees of a governmental agency are immune from any criminal liability for providing or failing to provide the information required by this section unless the person acts or fails to act due to malice, gross negligence, or deliberate indifference to the consequences.

(d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.

(4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian.

(b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay.

(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the

866 jurisdiction of the juvenile court, and the reason the minor was not released by law  
867 enforcement.

868 (b) (i) The designated youth corrections facility staff person shall immediately review  
869 the form and determine, based on the guidelines for detention admissions established by the  
870 Division of Juvenile Justice Services under Section 62A-7-202, whether to admit the minor to  
871 secure detention, admit the minor to home detention, place the minor in a placement other than  
872 detention, or return the minor home upon written promise to bring the minor to the court at a  
873 time set, or without restriction.

874 (ii) If the designated youth corrections facility staff person determines to admit the  
875 minor to home detention, that staff person shall notify the juvenile court of that determination.  
876 The court shall order that notice be provided to the designated persons in the local law  
877 enforcement agency and the school or transferee school, if applicable, which the minor attends  
878 of the home detention. The designated persons may receive the information for purposes of the  
879 minor's supervision and student safety.

880 (iii) Any employee of the local law enforcement agency and the school which the  
881 minor attends who discloses the notification of home detention is not:

882 (A) civilly liable except when disclosure constitutes fraud or willful misconduct as  
883 provided in Section 63-30d-202; and

884 (B) civilly or criminally liable except when disclosure constitutes a knowing violation  
885 of Section 63-2-801.

886 (c) A minor may not be admitted to detention unless the minor is detainable based on  
887 the guidelines or the minor has been brought to detention pursuant to a judicial order or  
888 division warrant pursuant to Section 62A-7-504.

889 (d) If a minor taken to detention does not qualify for admission under the guidelines  
890 established by the division under Section 62A-7-104, detention staff shall arrange appropriate  
891 placement.

892 (e) If a minor is taken into custody and admitted to a secure detention or shelter  
893 facility, facility staff shall:

894 (i) immediately notify the minor's parents, guardian, or custodian; and

895 (ii) promptly notify the court of the placement.

896 (f) If the minor is admitted to a secure detention or shelter facility outside the county of

the minor's residence and it is determined in the hearing held under Subsection ~~[78-3a-114]~~ 78A-5-113(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(6) A person may be taken into custody by a peace officer without a court order if the person is in apparent violation of a protective order or if there is reason to believe that a child is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

Section 13. Section **78A-5-113**, which is renumbered from Section 78-3a-114 is renumbered and amended to read:

~~[78-3a-114].~~        **78A-5-113. Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement for criminal proceedings -- Bail laws inapplicable, exception.**

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings unless it is unsafe for the public to leave the minor with the minor's parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(b) A child who must be taken from the child's home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.

(c) A child may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe to leave the child with the child's parents, guardian, or custodian.

(2) After admission of a child to a detention facility pursuant to the guidelines established by the Division of Juvenile Justice Services and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the child to the child's parents, guardian, or custodian if it is found the child can be safely returned to their care, either upon written promise to bring the child to the court at a time set or without restriction.

(a) If a child's parent, guardian, or custodian fails to retrieve the child from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the child remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under this Subsection (2) shall be retained by the Division of

928 Juvenile Justice Services to recover the cost of care for the time the child remains in the  
929 facility.

930 (3) (a) When a child is detained in a detention or shelter facility, the parents or  
931 guardian shall be informed by the person in charge of the facility that they have the right to a  
932 prompt hearing in court to determine whether the child is to be further detained or released.

933 (b) When a minor is detained in a detention facility, the minor shall be informed by the  
934 person in charge of the facility that the minor has the right to a prompt hearing in court to  
935 determine whether the minor is to be further detained or released.

936 (c) Detention hearings shall be held by the judge or by a commissioner.

937 (d) The court may, at any time, order the release of the minor, whether a detention  
938 hearing is held or not.

939 (e) If a child is released, and the child remains in the facility, because the parents,  
940 guardian, or custodian fails to retrieve the child, the parents, guardian, or custodian shall be  
941 responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

942 (4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a  
943 detention hearing, excluding weekends and holidays, unless the court has entered an order for  
944 continued detention.

945 (b) A child may not be held in a shelter facility longer than 48 hours prior to a shelter  
946 hearing, excluding weekends and holidays, unless a court order for extended shelter has been  
947 entered by the court after notice to all parties described in Section ~~[78-3a-306]~~ 78A-5-305.

948 (c) A hearing for detention or shelter may not be waived. Detention staff shall provide  
949 the court with all information received from the person who brought the minor to the detention  
950 facility.

951 (d) If the court finds at a detention hearing that it is not safe to release the minor, the  
952 judge or commissioner may order the minor to be held in the facility or be placed in another  
953 appropriate facility, subject to further order of the court.

954 (e) (i) After a detention hearing has been held, only the court may release a minor from  
955 detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to  
956 the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued  
957 detention is necessary.

958 (ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or

an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that notice of its decision, including any disposition, order, or no contact orders, be provided to designated persons in the appropriate local law enforcement agency and district superintendent or the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency, school district, and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63-30d-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63-2-801.

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101 for longer than 72 hours, excluding weekends and holidays. The period of detention may be extended by the court for one period of seven calendar days if:

(a) the Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(b) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(6) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(7) The court shall promptly notify the detention facility regarding its initial disposition and any ruling on a petition for an extension, whether granted or denied.

(8) (a) A child under 16 years of age may not be held in a jail, lockup, or other place for adult detention except as provided by Section 62A-7-201 or unless certified as an adult pursuant to Section ~~[78-3a-603]~~ 78A-5-703. The provisions of Section 62A-7-201 regarding confinement facilities apply to this Subsection (8).

(b) A child 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for children may, by court order that specifies the



reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults. However, a secure youth corrections facility is not an appropriate place of confinement for detention purposes under this section.

(9) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately notify the juvenile court when a person who is or appears to be under 18 years of age is received at the facility and shall make arrangements for the transfer of the person to a detention facility, unless otherwise ordered by the juvenile court.

(10) This section does not apply to a minor who is brought to the adult facility under charges pursuant to Section ~~[78-3a-602]~~ 78A-5-702 or by order of the juvenile court to be held for criminal proceedings in the district court under Section ~~[78-3a-603]~~ 78A-5-703.

(11) A minor held for criminal proceedings under Section ~~[78-3a-602]~~ 78A-5-702 or ~~[78-3a-603]~~ 78A-5-703 may be detained in a jail or other place of detention used for adults charged with crime.

(12) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in Subsection ~~[78-3a-503]~~ 78A-5-603(11).

(13) Section 76-8-418 is applicable to a child who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Juvenile Justice Services detention, shelter, or secure confinement facility which would be a third degree felony if committed by an adult.

Section 14. Section **78A-5-114**, which is renumbered from Section 78-3a-115 is renumbered and amended to read:

**~~[78-3a-115].~~        78A-5-114. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's cases heard separately from adult cases -- Minor or parents or custodian heard separately -- Continuance of hearing -- Consolidation of proceedings involving more than one minor.**

(1) Hearings in minor's cases shall be held before the court without a jury and may be conducted in an informal manner.

1021 ~~[(a) In abuse, neglect, and dependency cases in all districts other than pilot districts~~  
1022 ~~selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude the~~  
1023 ~~general public from hearings held prior to July 1, 2004.]~~

1024 (a) (i) In abuse, neglect, and dependency cases the court shall admit any person to a  
1025 hearing, including a hearing under Subsection 78A-5-322(3), unless the court makes a finding  
1026 upon the record that the person's presence at the hearing would:

1027 (A) be detrimental to the best interest of a child who is a party to the proceeding;

1028 (B) impair the fact-finding process; or

1029 (C) be otherwise contrary to the interests of justice.

1030 (ii) The court may exclude a person from a hearing under Subsection (1)(a)(i) on its  
1031 own motion or by motion of a party to the proceeding.

1032 (b) In delinquency cases the court shall admit all persons who have a direct interest in  
1033 the case and may admit persons requested by the parent or legal guardian to be present. The  
1034 court shall exclude all other persons except as provided in Subsection (1)(c).

1035 (c) In delinquency cases in which the minor charged is 14 years of age or older, the  
1036 court shall admit any person unless the hearing is closed by the court upon findings on the  
1037 record for good cause if:

1038 (i) the minor has been charged with an offense which would be a felony if committed  
1039 by an adult; or

1040 (ii) the minor is charged with an offense that would be a class A or B misdemeanor if  
1041 committed by an adult, and the minor has been previously charged with an offense which  
1042 would be a misdemeanor or felony if committed by an adult.

1043 (d) The victim of any act charged in a petition or information involving an offense  
1044 committed by a minor which if committed by an adult would be a felony or a class A or class B  
1045 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter  
1046 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,  
1047 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not  
1048 apply to important juvenile justice hearings as defined in Section 77-38-2.

1049 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right  
1050 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

1051 (i) the scheduling of any court hearings on the petition;

(ii) any findings made by the court; and

(iii) any sentence or decree imposed by the court.

(2) Minor's cases shall be heard separately from adult cases. The minor or the parents or custodian of a minor may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order.

(3) When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

Section 15. Section **78A-5-115**, which is renumbered from Section 78-3a-116 is renumbered and amended to read:

**~~[78-3a-116].~~        78A-5-115. Hearings -- Record -- County attorney or district attorney responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of evidence.**

(1) (a) A verbatim record of the proceedings shall be taken by an official court reporter or by means of a mechanical recording device in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

(b) (i) Notwithstanding any other provision, including Title 63, Chapter 2, Government Records Access and Management Act, a record of a proceeding made under Subsection (1)(a) shall be released by the court to any person upon a finding on the record for good cause.

(ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(iii) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the request.

(iv) For purposes of this Subsection (1)(b):

(A) "record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a); and

(B) "subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

(v) This Subsection (1)(b) applies:

(A) to records of proceedings made on or after November 1, 2003 in districts selected by the Judicial Council as pilot districts under Subsection ~~[78-3-21]~~ 78A-1-201(15)(a); and

(B) to records of proceedings made on or after July 1, 2004 in all other districts.

(2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and ~~[Title 78, Chapter 3a, Juvenile Court Act of 1996]~~ this chapter, relating to:

(i) protection or custody of an abused, neglected, or dependent child; and

(ii) petitions for termination of parental rights.

(c) The attorney general shall represent the Division of Child and Family Services in actions involving a minor who is not adjudicated as abused or neglected, but who is otherwise committed to the custody of that division by the juvenile court, and who is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in this Subsection (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Subsection (2)(a).

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, fish and game laws, and boating laws. However, proceedings involving offenses under Section ~~[78-3a-506]~~ 78A-5-606 are governed by that section regarding suspension of driving privileges.

(4) (a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material

relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care Citizen Review Boards pursuant to Section ~~[78-3g-103]~~ 78B-8-103 may be received in evidence and may be considered by the court along with other evidence. The court may require any person who participated in preparing the dispositional report to appear as a witness, if the person is reasonably available.

(5) (a) In an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under Section ~~[78-3a-306]~~ 78A-5-305 or the filing of a petition under Section ~~[78-3a-305]~~ 78A-5-303, each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:

(i) plans to report to the court at the proceeding; or  
(ii) could reasonably expect would be requested of the party by the court at the proceeding.

(b) The disclosure required under Subsection (5)(a) shall be made:  
(i) for dispositional hearings under Sections ~~[78-3a-310]~~ 78A-5-310 and ~~[78-3a-311]~~ 78A-5-311, no less than five days before the proceeding;

(ii) for proceedings under Title ~~[78]~~ 78A, Chapter ~~[3a]~~ 5, Part ~~[4]~~ 5, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and

(iii) for all other proceedings, no less than five days before the proceeding.

(c) If a party to a proceeding obtains information after the deadline in Subsection (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the party certifies to the court that the information was obtained after the deadline.

(d) Subsection (5)(a) does not apply to:

(i) pretrial hearings; and  
(ii) the frequent, periodic review hearings held in a dependency drug court case to assess and promote the parent's progress in substance abuse treatment.

(6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court

1145 may, in its discretion, consider evidence of statements made by a child under eight years of age  
1146 to a person in a trust relationship.

1147 Section 16. Section **78A-5-116**, which is renumbered from Section 78-3a-117 is  
1148 renumbered and amended to read:

1149 ~~[78-3a-117].~~ **78A-5-116. Minor's cases considered civil proceedings --**  
1150 **Adjudication of jurisdiction by juvenile court not conviction of crime, exceptions --**  
1151 **Minor not to be charged with crime, exception -- Traffic violation cases, abstracts to**  
1152 **Department of Public Safety.**

1153 (1) Except as provided in Sections ~~[78-3a-602]~~ 78A-5-702 and ~~[78-3a-603]~~  
1154 78A-5-703, proceedings in a minor's case shall be regarded as a civil proceeding with the court  
1155 exercising equitable powers.

1156 (2) An adjudication by a juvenile court that a minor is within its jurisdiction under  
1157 Section ~~[78-3a-104]~~ 78A-5-103 is not considered a conviction of a crime, except in cases  
1158 involving traffic violations. An adjudication may not operate to impose any civil disabilities  
1159 upon the minor nor to disqualify the minor for any civil service or military service or  
1160 appointment.

1161 (3) A minor may not be charged with a crime or convicted in any court except as  
1162 provided in Sections ~~[78-3a-602]~~ 78A-5-702 and ~~[78-3a-603]~~ 78A-5-703, and in cases  
1163 involving traffic violations. When a petition has been filed in the juvenile court, the minor may  
1164 not later be subjected to criminal prosecution based on the same facts except as provided in  
1165 Section ~~[78-3a-602]~~ 78A-5-702 or ~~[78-3a-603]~~ 78A-5-703.

1166 (4) An adjudication by a juvenile court that a minor is within its jurisdiction under  
1167 Section 78-3a-104 is considered a conviction for the purposes of determining the level of  
1168 offense for which a minor may be charged and enhancing the level of an offense in the juvenile  
1169 court. A prior adjudication may be used to enhance the level or degree of an offense  
1170 committed by an adult only as otherwise specifically provided.

1171 (5) Abstracts of court records for all adjudications of traffic violations shall be  
1172 submitted to the Department of Public Safety as provided in Section 53-3-218.

1173 (6) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution  
1174 may be forwarded to employers, financial institutions, law enforcement, constables, the Office  
1175 of Recovery Services, or other agencies for purposes of enforcing the order as provided in

1176 Section ~~[78-3a-118]~~ 78A-5-117.

1177 Section 17. Section **78A-5-117**, which is renumbered from Section 78-3a-118 is  
1178 renumbered and amended to read:

1179 ~~[78-3a-118]~~. **78A-5-117. Adjudication of jurisdiction of juvenile court --**  
1180 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**  
1181 **Obtaining DNA sample.**

1182 (1) (a) When a minor is found to come within the provisions of Section ~~[78-3a-104]~~  
1183 78A-5-103, the court shall so adjudicate. The court shall make a finding of the facts upon  
1184 which it bases its jurisdiction over the minor. However, in cases within the provisions of  
1185 Subsection ~~[78-3a-104]~~ 78A-5-103(1), findings of fact are not necessary.

1186 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of  
1187 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided  
1188 to the school superintendent of the district in which the minor resides or attends school. Notice  
1189 shall be made to the district superintendent within three days of the adjudication and shall  
1190 include:

1191 (i) the specific offenses for which the minor was adjudicated; and

1192 (ii) if available, if the victim:

1193 (A) resides in the same school district as the minor; or

1194 (B) attends the same school as the minor.

1195 (2) Upon adjudication the court may make the following dispositions by court order:

1196 (a) (i) The court may place the minor on probation or under protective supervision in  
1197 the minor's own home and upon conditions determined by the court, including compensatory  
1198 service as provided in Section 78-11-20.7.

1199 (ii) The court may place the minor in state supervision with the probation department  
1200 of the court, under the legal custody of:

1201 (A) the minor's parent or guardian;

1202 (B) the Division of Juvenile Justice Services; or

1203 (C) the Division of Child and Family Services.

1204 (iii) If the court orders probation or state supervision, the court shall direct that notice  
1205 of its order be provided to designated persons in the local law enforcement agency and the  
1206 school or transferee school, if applicable, that the minor attends. The designated persons may

1207 receive the information for purposes of the minor's supervision and student safety.

1208 (iv) Any employee of the local law enforcement agency and the school that the minor  
1209 attends who discloses the court's order of probation is not:

1210 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as  
1211 provided in Section 63-30d-202; and

1212 (B) civilly or criminally liable except when the disclosure constitutes a knowing  
1213 violation of Section 63-2-801.

1214 (b) The court may place the minor in the legal custody of a relative or other suitable  
1215 person, with or without probation or protective supervision, but the juvenile court may not  
1216 assume the function of developing foster home services.

1217 (c) (i) The court may:

1218 (A) vest legal custody of the minor in the Division of Child and Family Services,  
1219 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;  
1220 and

1221 (B) order the Department of Human Services to provide dispositional  
1222 recommendations and services.

1223 (ii) For minors who may qualify for services from two or more divisions within the  
1224 Department of Human Services, the court may vest legal custody with the department.

1225 (iii) (A) A minor who is committed to the custody of the Division of Child and Family  
1226 Services on grounds other than abuse or neglect is subject to the provisions of Title [78] 78A,  
1227 Chapter [3a] 5, Part [3A] 4, Minors in Custody on Grounds Other Than Abuse or Neglect, and  
1228 Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

1229 (B) Prior to the court entering an order to place a minor in the custody of the Division  
1230 of Child and Family Services on grounds other than abuse or neglect, the court shall provide  
1231 the division with notice of the hearing no later than five days before the time specified for the  
1232 hearing so the division may attend the hearing.

1233 (C) Prior to committing a child to the custody of the Division of Child and Family  
1234 Services, the court shall make a finding as to what reasonable efforts have been attempted to  
1235 prevent the child's removal from the child's home.

1236 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for  
1237 secure confinement.



(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection ~~[78-3a-104]~~ 78A-5-103(1)(c) may not be committed to the Division of Juvenile Justice Services.

(e) The court may commit a minor, subject to the court retaining continuing jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice Services for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Juvenile Justice Services.

(f) (i) The court may commit a minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to a minor adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section ~~[78-3a-901]~~ 78A-5-1101.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title ~~[78]~~ 78A, Chapter ~~[3a]~~ 5, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place a minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) (i) The court may order a minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section ~~[78-3a-318]~~ 78A-5-319 and impose fines in limited amounts.

(ii) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing

1269 information resulting in a court adjudication that the minor is within the jurisdiction of the  
1270 juvenile court due to the commission of a criminal offense.

1271 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the  
1272 court may order the minor to make restitution for costs expended by any governmental entity  
1273 for the return.

1274 (j) The court may issue orders necessary for the collection of restitution and fines  
1275 ordered by the court, including garnishments, wage withholdings, and executions.

1276 (k) (i) The court may through its probation department encourage the development of  
1277 employment or work programs to enable minors to fulfill their obligations under Subsection  
1278 (2)(i) and for other purposes considered desirable by the court.

1279 (ii) Consistent with the order of the court, the probation officer may permit a minor  
1280 found to be within the jurisdiction of the court to participate in a program of work restitution or  
1281 compensatory service in lieu of paying part or all of the fine imposed by the court.

1282 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in  
1283 addition to any other disposition authorized by this section:

1284 (A) restrain the minor from driving for periods of time the court considers necessary;  
1285 and

1286 (B) take possession of the minor's driver license.

1287 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the  
1288 suspension of driving privileges for an offense under Section ~~[78-3a-506]~~ 78A-5-606 are  
1289 governed only by Section ~~[78-3a-506]~~ 78A-5-606.

1290 (m) (i) When a minor is found within the jurisdiction of the juvenile court under  
1291 Section ~~[78-3a-104]~~ 78A-5-103 because of violating Section 58-37-8, Title 58, Chapter 37a,  
1292 Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,  
1293 the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform  
1294 a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory  
1295 completion of an approved substance abuse prevention or treatment program may be credited  
1296 by the court as compensatory service hours.

1297 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
1298 ~~[78-3a-104]~~ 78A-5-103 because of a violation of Section 32A-12-209 or Subsection  
1299 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent

1300 adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours  
1301 of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory  
1302 completion of an approved substance abuse prevention or treatment program may be credited  
1303 by the court as compensatory service hours.

1304 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

1305 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

1306 (B) receive other special care.

1307 (ii) For purposes of receiving the examination, treatment, or care described in

1308 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

1309 (iii) In determining whether to order the examination, treatment, or care described in

1310 Subsection (2)(n)(i), the court shall consider:

1311 (A) the desires of the minor;

1312 (B) if the minor is under the age of 18, the desires of the parents or guardian of the

1313 minor; and

1314 (C) whether the potential benefits of the examination, treatment, or care outweigh the

1315 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain

1316 function impairment, or emotional or physical harm resulting from the compulsory nature of

1317 the examination, treatment, or care.

1318 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the

1319 interest of the minor, and may appoint as guardian a public or private institution or agency in

1320 which legal custody of the minor is vested.

1321 (ii) In placing a minor under the guardianship or legal custody of an individual or of a

1322 private agency or institution, the court shall give primary consideration to the welfare of the

1323 minor. When practicable, the court may take into consideration the religious preferences of the

1324 minor and of a child's parents.

1325 (p) (i) In support of a decree under Section [~~78-3a-104~~] 78A-5-103, the court may

1326 order reasonable conditions to be complied with by a minor's parents or guardian, a minor, a

1327 minor's custodian, or any other person who has been made a party to the proceedings.

1328 Conditions may include:

1329 (A) parent-time by the parents or one parent;

1330 (B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title [78] 78A, Chapter [3a] 5, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a child may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title [78] 78A, Chapter [3a] 5, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as

a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the child reaches majority;

(B) are not subject to review under Section ~~[78-3a-119]~~ 78A-5-118; and

(C) may be modified by petition or motion as provided in Section ~~[78-3a-903]~~ 78A-5-1103.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA

1393 Specimen Restricted Account created in Section 53-10-407.

1394 (d) Payment of the reimbursement is second in priority to payments the minor is  
1395 ordered to make for restitution under this section and treatment under Section ~~[78-3a-318]~~  
1396 78A-5-320.

1397 Section 18. Section **78A-5-118**, which is renumbered from Section 78-3a-119 is  
1398 renumbered and amended to read:

1399 ~~[78-3a-119]~~. **78A-5-118. Period of operation of judgment, decree, or order**  
1400 **-- Rights and responsibilities of agency or individual granted legal custody.**

1401 (1) A judgment, order, or decree of the juvenile court does not operate after the minor  
1402 becomes 21 years of age, except for:

1403 (a) orders of commitment to the Utah State Developmental Center or to the custody of  
1404 the Division of Substance Abuse and Mental Health;

1405 (b) adoption orders under Subsection ~~[78-3a-104]~~ 78A-5-103(1);

1406 (c) orders permanently terminating the rights of a parent, guardian, or custodian, and  
1407 permanent orders of custody and guardianships; and

1408 (d) unless terminated by the court, orders to pay any fine or restitution.

1409 (2) (a) Except as provided in Part 3, Abuse, Neglect, and Dependency Proceedings, an  
1410 order vesting legal custody or guardianship of a minor in an individual, agency, or institution  
1411 may be for an indeterminate period. A review hearing shall be held, however, upon the  
1412 expiration of 12 months, and, with regard to petitions filed by the Division of Child and Family  
1413 Services, no less than once every six months thereafter. The individual, agency, or institution  
1414 involved shall file the petition for that review hearing. The court may terminate the order, or  
1415 after notice and hearing, continue the order if it finds continuation of the order necessary to  
1416 safeguard the welfare of the minor or the public interest. The findings of the court and its  
1417 reasons shall be entered with the continuation order or with the order denying continuation.

1418 (b) Subsection (2)(a) does not apply to minors who are in the custody of the Division  
1419 of Child and Family Services, and who are placed in foster care, a secure youth corrections  
1420 facility, the Division of Substance Abuse and Mental Health, the Utah State Developmental  
1421 Center, or any agency licensed for child placements and adoptions, in cases where all parental  
1422 rights of the natural parents have been terminated by the court under Part ~~[4]~~ 5, Termination of  
1423 Parental Rights Act, and custody of the minor has been granted to the agency for adoption or

1424 other permanent placement.

1425 (3) (a) An agency granted legal custody may determine where and with whom the  
1426 minor will live, provided that placement of the minor does not remove him from the state  
1427 without court approval.

1428 (b) An individual granted legal custody shall personally exercise the rights and  
1429 responsibilities involved in legal custody, unless otherwise authorized by the court.

1430 Section 19. Section **78A-5-119**, which is renumbered from Section 78-3a-120 is  
1431 renumbered and amended to read:

1432 ~~[78-3a-120].~~ **78A-5-119. Modification of order or decree -- Requirements**  
1433 **for changing or terminating custody, probation, or protective supervision.**

1434 (1) The court may modify or set aside any order or decree made by it, however a  
1435 modification of an order placing a minor on probation may not be made upon an alleged  
1436 violation of the terms of probation unless there has been a hearing in accordance with the  
1437 procedures in Section ~~[78-3a-903]~~ 78A-5-1103.

1438 (2) Notice of the hearing shall be required in any case in which the effect of modifying  
1439 or setting aside an order or decree may be to make any change in the minor's legal custody.

1440 (3) (a) Notice of an order terminating probation or protective supervision of a child  
1441 shall be given to the child's:

1442 (i) parents;

1443 (ii) guardian;

1444 (iii) custodian; and

1445 (iv) where appropriate, to the child.

1446 (b) Notice of an order terminating probation or protective supervision of a minor who  
1447 is at least 18 years of age shall be given to the minor.

1448 Section 20. Section **78A-5-120**, which is renumbered from Section 78-3a-121 is  
1449 renumbered and amended to read:

1450 ~~[78-3a-121].~~ **78A-5-120. Continuing jurisdiction of juvenile court --**  
1451 **Period of and termination of jurisdiction -- Notice of discharge from custody of local**  
1452 **mental health authority or Utah State Developmental Center -- Transfer of continuing**  
1453 **jurisdiction to other district.**

1454 (1) Jurisdiction of a minor obtained by the court through adjudication under Section

~~[78-3a-118]~~ 78A-5-117 continues for purposes of this chapter until he becomes 21 years of age, unless terminated earlier. However, the court, subject to Section ~~[78-3a-122]~~ 78A-5-121, retains jurisdiction beyond the age of 21 of a person who has refused or failed to pay any fine or victim restitution ordered by the court, but only for the purpose of causing compliance with existing orders.

(2) (a) The continuing jurisdiction of the court terminates:

(i) upon order of the court;

(ii) upon commitment to a secure youth corrections facility; or

(iii) upon commencement of proceedings in adult cases under Section ~~[78-3a-801]~~ 78A-5-1001.

(b) The continuing jurisdiction of the court is not terminated by marriage.

(3) When a minor has been committed by the court to the physical custody of a local mental health authority or its designee or to the Utah State Developmental Center, the local mental health authority or its designee or the superintendent of the Utah State Developmental Center shall give the court written notice of its intention to discharge, release, or parole the minor not fewer than five days prior to the discharge, release, or parole.

(4) Jurisdiction over a minor on probation or under protective supervision, or of a minor who is otherwise under the continuing jurisdiction of the court, may be transferred by the court to the court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges. The receiving court has the same powers with respect to the minor that it would have if the proceedings originated in that court.

Section 21. Section **78A-5-121**, which is renumbered from Section 78-3a-122 is renumbered and amended to read:

~~[78-3a-122]~~. **78A-5-121. Entry of judgement for fine or restitution -- Transfer for collection.**

(1) If, prior to the entry of any order terminating jurisdiction of a juvenile, there remains any unpaid balance for any fine or restitution ordered by the court, the court shall record all pertinent information in the juvenile's file and transfer responsibility to collect all unpaid fines and restitution to the Office of State Debt Collection.

(2) Before transferring the responsibility to collect any past due fines, the court shall reduce the order to a judgment listing the Office of State Debt Collection as the judgment



1486 creditor.

1487 (3) Before transferring the responsibility to collect any past due accounts receivable for  
1488 restitution to a victim, the court shall reduce the restitution order to a judgment listing the  
1489 victim, or the estate of the victim, as the judgment creditor.

1490 Section 22. Section **78A-5-201**, which is renumbered from Section 78-3a-107 is  
1491 renumbered and amended to read:

1492 ~~[78-3a-107].~~ **78A-5-201. Judges of juvenile court -- Appointments --**  
1493 **Terms.**

1494 (1) Judges of the juvenile court shall be appointed initially to serve until the first  
1495 general election held more than three years after the effective date of the appointment.

1496 Thereafter, the term of office of a judge of a juvenile court is six years and commences on the  
1497 first Monday in January next following the date of election.

1498 (2) A judge whose term expires may serve, upon request of the Judicial Council, until a  
1499 successor is appointed and qualified.

1500 Section 23. Section **78A-5-202**, which is renumbered from Section 78-3a-108 is  
1501 renumbered and amended to read:

1502 ~~[78-3a-108].~~ **78A-5-202. Sessions of juvenile court.**

1503 (1) In each county, regular juvenile court sessions shall be held at a place designated by  
1504 the judge or judges of the juvenile court district, with the approval of the board.

1505 (2) Court sessions shall be held in each county when the presiding judge of the juvenile  
1506 court directs, except that a judge of the district may hold court in any county within the district  
1507 at any time, if required by the urgency of the case.

1508 Section 24. Section **78A-5-203**, which is renumbered from Section 78-3a-201 is  
1509 renumbered and amended to read:

1510 ~~[78-3a-201].~~ **78A-5-203. Board of Juvenile Court Judges -- Composition --**  
1511 **Purpose.**

1512 (1) (a) The Judicial Council shall by rule establish a Board of Juvenile Court Judges.

1513 (b) The board shall establish general policies for the operation of the juvenile courts  
1514 and uniform rules and forms governing practice, consistent with the provisions of this chapter,  
1515 the rules of the Judicial Council, and rules of the Supreme Court.

1516 (c) The board may receive and expend any funds that may become available from the

1517 federal government or private sources to carry out any of the purposes of this chapter.

1518 (i) The board may meet any federal requirements that are conditions precedent to  
1519 receiving the funds.

1520 (ii) The board may cooperate with the federal government in a program for training  
1521 personnel employed or preparing for employment by the juvenile court and may receive and  
1522 expend funds from federal or state sources or from private donations for these purposes.

1523 (iii) Funds donated or paid to the juvenile court by private sources for the purpose of  
1524 community service programs shall be nonlapsing.

1525 (iv) The board may:

1526 (A) contract with public or nonprofit institutions of higher learning for the training of  
1527 personnel;

1528 (B) conduct short-term training courses of its own and hire experts on a temporary  
1529 basis for this purpose; and

1530 (C) cooperate with the Division of Child and Family Services and other state  
1531 departments or agencies in personnel training programs.

1532 (d) The board may contract, on behalf of the juvenile court, with the United States  
1533 Forest Service or other agencies or departments of the federal government or with agencies or  
1534 departments of other states for the care and placement of minors adjudicated under this chapter.

1535 (e) The powers to contract and expend funds are subject to budgetary control and  
1536 procedures as provided by law.

1537 (2) Under the direction of the presiding officer of the council, the chair shall supervise  
1538 the juvenile courts to ensure uniform adherence to law and to the rules and forms adopted by  
1539 the Supreme Court and Judicial Council, and to promote the proper and efficient functioning of  
1540 the juvenile courts.

1541 (3) The judges of districts having more than one judge shall elect a presiding judge. In  
1542 districts comprised of five or more judges and court commissioners, the presiding judge shall  
1543 receive an additional \$1,000 per annum as compensation.

1544 (4) Consistent with policies of the Judicial Council, the presiding judge shall:

1545 (a) implement policies of the Judicial Council;

1546 (b) exercise powers and perform administrative duties as authorized by the Judicial  
1547 Council;

- 1548 (c) manage the judicial business of the district; and  
1549 (d) call and preside over meetings of judges of the district.

1550 Section 25. Section **78A-5-204**, which is renumbered from Section 78-3a-202 is  
1551 renumbered and amended to read:

1552 ~~[78-3a-202].~~ **78A-5-204. Administrator of the juvenile court --**  
1553 **Appointment -- Qualifications -- Powers and duties.**

1554 (1) With the approval of the board, the state court administrator shall appoint a chief  
1555 administrative officer of the juvenile court.

1556 (2) The chief administrative officer shall be selected on the basis of professional ability  
1557 and experience in the field of public administration and shall possess an understanding of court  
1558 procedures, as well as the nature and significance of probation services and other court  
1559 services.

1560 Section 26. Section **78A-5-205**, which is renumbered from Section 78-3a-203 is  
1561 renumbered and amended to read:

1562 ~~[78-3a-203].~~ **78A-5-205. District court executives -- Selection -- Duties.**

1563 (1) The chief administrative officer of the juvenile court, with the approval of the judge  
1564 of each district or the presiding judge of multiple judge districts, shall appoint a court executive  
1565 for each district. The court executive serves at the pleasure of the chief administrative officer.

1566 (2) The court executive shall:

1567 (a) appoint a clerk of the court, deputy court clerks, probation officers, and other  
1568 persons as required to carry out the work of the court;

1569 (b) supervise the work of all nonjudicial court staff of the district; and

1570 (c) serve as administrative officer of the district.

1571 (3) The clerk shall keep a record of court proceedings and may issue all process and  
1572 notice required.

1573 Section 27. Section **78A-5-206**, which is renumbered from Section 78-3a-204 is  
1574 renumbered and amended to read:

1575 ~~[78-3a-204].~~ **78A-5-206. Juvenile court employees -- Salaries -- State**  
1576 **courts personnel system -- Exemptions and discharge.**

1577 (1) All employees except judges and commissioners shall be selected, promoted, and  
1578 discharged through the state courts personnel system for the juvenile court, under the direction

1579 and rules of the Board of Juvenile Court Judges and the Judicial Council.

1580 (2) An employee under the state courts personnel system may not be discharged except  
1581 for cause and after a hearing before the appointing authority, with appeal as provided by the  
1582 state courts personnel system. An employee may be suspended pending the hearing and appeal.

1583 Section 28. Section **78A-5-207**, which is renumbered from Section 78-3a-205 is  
1584 renumbered and amended to read:

1585 ~~[78-3a-205].~~ **78A-5-207. Volunteers.**

1586 The names of volunteers serving under Section ~~[78-3a-912]~~ 78A-5-902 shall be stated  
1587 in the court records of the cases they work with. Volunteers of record with the court are  
1588 considered to be volunteers to the juvenile court and are volunteers under Title 67, Chapter 20,  
1589 Volunteer Government Workers Act.

1590 Section 29. Section **78A-5-208**, which is renumbered from Section 78-3a-209 is  
1591 renumbered and amended to read:

1592 ~~[78-3a-209].~~ **78A-5-208. Mental health evaluations -- Duty of**  
1593 **administrator.**

1594 (1) The administrator of the juvenile court, with the approval of the board, and the  
1595 executive director of the Department of Health, and director of the Division of Substance  
1596 Abuse and Mental Health shall from time to time agree upon an appropriate plan:

1597 (a) for obtaining mental health services and health services for the juvenile court from  
1598 the state and local health departments and programs of mental health; and

1599 (b) for assistance by the Department of Health and the Division of Substance Abuse  
1600 and Mental Health in securing for the juvenile court special health, mental health, and related  
1601 services including community mental health services not already available from the  
1602 Department of Health and the Division of Substance Abuse and Mental Health.

1603 (2) The Legislature may provide an appropriation to the Department of Health and the  
1604 Division of Substance Abuse and Mental Health for this purpose.

1605 Section 30. Section **78A-5-209**, which is renumbered from Section 78-3a-206 is  
1606 renumbered and amended to read:

1607 ~~[78-3a-206].~~ **78A-5-209. Court records -- Inspection.**

1608 (1) The court and the probation department shall keep records as required by the board  
1609 and the presiding judge.

1610 (2) Court records shall be open to inspection by:

1611 (a) the parents or guardian of a child, a minor who is at least 18 years of age, other  
1612 parties in the case, the attorneys, and agencies to which custody of a minor has been  
1613 transferred;

1614 (b) for information relating to adult offenders alleged to have committed a sexual  
1615 offense, a felony or class A misdemeanor drug offense, or an offense against the person under  
1616 Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose  
1617 of evaluating whether an individual should be permitted to obtain or retain a license as an  
1618 educator or serve as an employee or volunteer in a school, with the understanding that the  
1619 office must provide the individual with an opportunity to respond to any information gathered  
1620 from its inspection of the records before it makes a decision concerning licensure or  
1621 employment;

1622 (c) the Criminal Investigations and Technical Services Division, established in Section  
1623 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm  
1624 and establishing good character for issuance of a concealed firearm permit as provided in  
1625 Section 53-5-704;

1626 (d) the Division of Child and Family Services for the purpose of Child Protective  
1627 Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and  
1628 administrative hearings in accordance with Section 62A-4a-1009; and

1629 (e) for information related to a juvenile offender who has committed a sexual offense, a  
1630 felony, or an offense which if committed by an adult would be a misdemeanor, the Department  
1631 of Health, for the purpose of evaluating under the provisions of Subsection 26-39-107(3)  
1632 whether a licensee should be permitted to obtain or retain a license to provide child care, with  
1633 the understanding that the department must provide the individual who committed the offense  
1634 with an opportunity to respond to any information gathered from its inspection of records  
1635 before it makes a decision concerning licensure.

1636 (3) With the consent of the judge, court records may be inspected by the child, by  
1637 persons having a legitimate interest in the proceedings, and by persons conducting pertinent  
1638 research studies.

1639 (4) If a petition is filed charging a minor 14 years of age or older with an offense that  
1640 would be a felony if committed by an adult, the court shall make available to any person upon

request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the court upon findings on the record for good cause.

(5) Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the court, given under rules adopted by the board.

(6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency history summary of any person charged as an adult with a felony offense shall be made available to any person upon request.

(b) This provision does not apply to records that have been destroyed or expunged in accordance with court rules.

(c) The court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Section 31. Section **78A-5-210**, which is renumbered from Section 78-3a-207 is renumbered and amended to read:

~~[78-3a-207].~~        **78A-5-210. Fines -- Fees -- Deposit with state treasurer -- Restricted account.**

(1) There is created within the General Fund a restricted account known as the "Nonjudicial Adjustment Account."

(2) (a) The account shall be funded from the financial penalty established under Subsection ~~[78-3a-502]~~ 78A-5-602(2)(d)(i).

(b) The court shall deposit all monies collected as a result of penalties assessed as part of the nonjudicial adjustment of a case in the account.

(c) The account shall be used to pay the expenses of juvenile compensatory service, victim restitution, and diversion programs.

(3) (a) Except under Subsection (3)(b) and as otherwise provided by law, all fines, fees, penalties, and forfeitures imposed and collected by the juvenile court shall be paid to the state treasurer for deposit in the General Fund.

(b) Not more than 50% of any fine or forfeiture collected may be paid to a state rehabilitative employment program for delinquent minors that provides for employment of the minor in the county of the minor's residence if:

(i) reimbursement for the minor's labor is paid to the victim of the minor's delinquent

1672 behavior;

1673 (ii) the amount earned and paid is set by court order;

1674 (iii) the minor is not paid more than the hourly minimum wage; and

1675 (iv) no payments to victims are made without the minor's involvement in a  
1676 rehabilitative work program.

1677 (c) Fines withheld under Subsection (3)(b) and any private contributions to the  
1678 rehabilitative employment program are accounted for separately and are subject to audit at any  
1679 time by the state auditor.

1680 (d) Funds withheld under Subsection (3)(b) and private contributions are nonlapsing.  
1681 The Board of Juvenile Court Judges shall establish policies for the use of the funds described  
1682 in this subsection.

1683 (4) No fee may be charged by any state or local public officer for the service of process  
1684 in any proceedings initiated by a public agency.

1685 Section 32. Section **78A-5-211**, which is renumbered from Section 78-3a-208 is  
1686 renumbered and amended to read:

1687 ~~[78-3a-208].~~ **78A-5-211. Courtrooms -- Physical facilities.**

1688 (1) Suitable courtrooms and office space in each county shall be provided or made  
1689 available to the court by the county for the hearing of cases except in counties where the state  
1690 has provided courtrooms and offices as needed.

1691 (2) Equipment and supplies for the use of the judges, officers, and employees of the  
1692 court and the cost of maintaining the juvenile courts shall be paid from the General Fund or  
1693 other funds for those purposes.

1694 Section 33. Section **78A-5-301**, which is renumbered from Section 78-3a-301 is  
1695 renumbered and amended to read:

1696 ~~[78-3a-301].~~ **78A-5-301. Court-ordered protective custody of a child**  
1697 **following petition filing -- Grounds.**

1698 (1) After a petition has been filed under Section ~~[78-3a-305]~~ 78A-5-303, if the child  
1699 who is the subject of the petition is not in the protective custody of the division, a court may  
1700 order that the child be removed from the child's home or otherwise taken into protective  
1701 custody if the court finds, by a preponderance of the evidence, that any one or more of the  
1702 following circumstances exist:

1703 (a) (i) there is an imminent danger to the physical health or safety of the child; and  
1704 (ii) the child's physical health or safety may not be protected without removing the  
1705 child from the custody of the child's parent or guardian;

1706 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct  
1707 that causes the child to suffer emotional damage; and

1708 (ii) there are no reasonable means available by which the child's emotional health may  
1709 be protected without removing the child from the custody of the child's parent or guardian;

1710 (c) the child or another child residing in the same household has been physically or  
1711 sexually abused, or is considered to be at substantial risk of being physically or sexually  
1712 abused, by a parent or guardian, a member of the parent's or guardian's household, or other  
1713 person known to the parent or guardian;

1714 (d) the parent or guardian is unwilling to have physical custody of the child;

1715 (e) the child is abandoned or left without any provision for the child's support;

1716 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged  
1717 or cannot arrange for safe and appropriate care for the child;

1718 (g) (i) a relative or other adult custodian with whom the child is left by the parent or  
1719 guardian is unwilling or unable to provide care or support for the child;

1720 (ii) the whereabouts of the parent or guardian are unknown; and

1721 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;

1722 (h) the child is in immediate need of medical care;

1723 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an  
1724 environment that poses a threat to the child's health or safety; or

1725 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose  
1726 a threat to the child's health or safety;

1727 (j) the child or another child residing in the same household has been neglected;

1728 (k) an infant has been abandoned, as defined in Section ~~[78-3a-313.5]~~ 78A-5-314;

1729 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or  
1730 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act;  
1731 and

1732 (ii) any clandestine laboratory operation was located in the residence or on the property  
1733 where the child resided; or



(m) the child's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (1)(c):

(i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically or sexually abused as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically or sexually abused.

(3) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

(4) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(5) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.

(6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

(i) the administration of a psychotropic medication to a child;

(ii) a psychiatric, psychological, or behavioral treatment for a child; or

1765 (iii) a psychiatric or behavioral health evaluation of a child.

1766 (b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family  
1767 Services may remove a child under conditions that would otherwise be prohibited under  
1768 Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a  
1769 serious, imminent risk to the child's physical safety or the physical safety of others.

1770 Section 34. Section **78A-5-302**, which is renumbered from Section 78-3a-304.5 is  
1771 renumbered and amended to read:

1772 ~~[78-3a-304.5].~~ **78A-5-302. Rules of procedure -- Ex parte communications.**

1773 (1) The Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure apply  
1774 to abuse, neglect, and dependency proceedings unless the provisions of this part specify  
1775 otherwise.

1776 (2) Any unauthorized ex parte communication concerning a pending case between a  
1777 judge and a party to an abuse, neglect, or dependency proceeding shall be recorded for  
1778 subsequent review, if necessary, by the Judicial Conduct Commission.

1779 Section 35. Section **78A-5-303**, which is renumbered from Section 78-3a-305 is  
1780 renumbered and amended to read:

1781 ~~[78-3a-305].~~ **78A-5-303. Petition filed.**

1782 (1) For purposes of this section, "petition" means a petition to commence proceedings  
1783 in a juvenile court alleging that a child is:

- 1784 (a) abused;  
1785 (b) neglected; or  
1786 (c) dependent.

1787 (2) (a) Subject to Subsection (2)(b), any interested person may file a petition.

1788 (b) A person described in Subsection (2)(a) shall make a referral with the division  
1789 before the person files a petition.

1790 (3) If the child who is the subject of a petition is removed from the child's home by the  
1791 division, the petition shall be filed on or before the date of the initial shelter hearing described  
1792 in Section ~~[78-3a-306]~~ **78A-5-304**.

1793 (4) The petition shall be verified, and contain all of the following:

- 1794 (a) the name, age, and address, if any, of the child upon whose behalf the petition is  
1795 brought;

(b) the names and addresses, if known to the petitioner, of both parents and any guardian of the child;

(c) a concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is abused, neglected, or dependent; and

(d) a statement regarding whether the child is in protective custody, and if so, the date and precise time the child was taken into protective custody.

Section 36. Section **78A-5-304**, which is renumbered from Section 78-3a-305.5 is renumbered and amended to read:

~~[78-3a-305.5].~~        **78A-5-304. Opportunity for a child to testify or address the court.**

(1) For purposes of this section, "postadjudication hearing" means:

(a) a disposition hearing;

(b) a permanency hearing; or

(c) a review hearing, except a drug court review hearing.

(2) A child shall be present at any postadjudication hearing in a case relating to the abuse, neglect, or dependency of the child, unless the court determines that:

(a) requiring the child to be present at the postadjudication hearing would be detrimental to the child, or impractical; or

(b) the child is not sufficiently mature to articulate the child's wishes in relation to the hearing.

(3) A court may, in the court's discretion, order that a child described in Subsection (2) be present at a hearing that is not a postadjudication hearing.

(4) (a) Except as provided in Subsection (4)(b), at any hearing in a case relating to the abuse, neglect, or dependency of a child, when the child is present at the hearing, the court shall:

(i) ask the child whether the child desires the opportunity to address the court or testify; and

(ii) if the child desires an opportunity to address the court or testify, allow the child to address the court or testify.

(b) Subsection (4)(a) does not apply if the court determines that:

(i) it would be detrimental to the child to comply with Subsection (4)(a); or

1827 (ii) the child is not sufficiently mature to articulate the child's wishes in relation to the  
1828 hearing.

1829 (c) Subject to applicable court rules, the court may allow the child to address the court  
1830 in camera.

1831 (5) Nothing in this section prohibits a child from being present at a hearing that the  
1832 child is not required to be at by this section or by court order, unless the court orders otherwise.

1833 Section 37. Section **78A-5-305**, which is renumbered from Section 78-3a-306 is  
1834 renumbered and amended to read:

1835 ~~[78-3a-306].~~ **78A-5-305. Shelter hearing.**

1836 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays  
1837 after any one or all of the following occur:

1838 (a) removal of the child from the child's home by the division;

1839 (b) placement of the child in the protective custody of the division;

1840 (c) emergency placement under Subsection 62A-4a-202.1(4);

1841 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter  
1842 at the request of the division; or

1843 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under  
1844 Subsection ~~[78-3a-106]~~ 78A-5-106(4).

1845 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)  
1846 through (e), the division shall issue a notice that contains all of the following:

1847 (a) the name and address of the person to whom the notice is directed;

1848 (b) the date, time, and place of the shelter hearing;

1849 (c) the name of the child on whose behalf a petition is being brought;

1850 (d) a concise statement regarding:

1851 (i) the reasons for removal or other action of the division under Subsection (1); and

1852 (ii) the allegations and code sections under which the proceeding has been instituted;

1853 (e) a statement that the parent or guardian to whom notice is given, and the child, are

1854 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is

1855 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be  
1856 provided; and

1857 (f) a statement that the parent or guardian is liable for the cost of support of the child in

the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection ~~[78-3a-106]~~ 78A-5-106(4), on:

(a) the appropriate guardian ad litem; and

(b) both parents and any guardian of the child, unless the parents or guardians cannot be located.

(4) The following persons shall be present at the shelter hearing:

(a) the child, unless it would be detrimental for the child;

(b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;

(c) counsel for the parents, if one is requested;

(d) the child's guardian ad litem;

(e) the caseworker from the division who is assigned to the case; and

(f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall:

(i) provide an opportunity to provide relevant testimony to:

(A) the child's parent or guardian, if present; and

(B) any other person having relevant knowledge; and

(ii) subject to Section ~~[78-3a-305.5]~~ 78A-5-304, provide an opportunity for the child to testify.

(b) The court:

(i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and

(iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

1889 (6) If the child is in the protective custody of the division, the division shall report to  
1890 the court:

1891 (a) the reason why the child was removed from the parent's or guardian's custody;

1892 (b) any services provided to the child and the child's family in an effort to prevent  
1893 removal;

1894 (c) the need, if any, for continued shelter;

1895 (d) the available services that could facilitate the return of the child to the custody of  
1896 the child's parent or guardian; and

1897 (e) subject to Subsection [~~78-3a-307~~] 78A-5-306(8)(c), whether any relatives of the  
1898 child or friends of the child's parents may be able and willing to take temporary custody.

1899 (7) The court shall consider all relevant evidence provided by persons or entities  
1900 authorized to present relevant evidence pursuant to this section.

1901 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good  
1902 cause shown, the court may grant no more than one continuance, not to exceed five judicial  
1903 days.

1904 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for  
1905 a continuance under Subsection (8)(a).

1906 (9) (a) If the child is in the protective custody of the division, the court shall order that  
1907 the child be released from the protective custody of the division unless it finds, by a  
1908 preponderance of the evidence, that any one of the following exist:

1909 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or  
1910 safety of the child and the child's physical health or safety may not be protected without  
1911 removing the child from the custody of the child's parent;

1912 (ii) (A) the child is suffering emotional damage; and

1913 (B) there are no reasonable means available by which the child's emotional health may  
1914 be protected without removing the child from the custody of the child's parent;

1915 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is  
1916 not removed from the custody of the child's parents;

1917 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same  
1918 household has been physically or sexually abused, or is considered to be at substantial risk of  
1919 being physically or sexually abused, by a:

1920 (A) parent;

1921 (B) member of the parent's household; or

1922 (C) person known to the parent;

1923 (v) the parent is unwilling to have physical custody of the child;

1924 (vi) the child is without any provision for the child's support;

1925 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe

1926 and appropriate care for the child;

1927 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is

1928 unwilling or unable to provide care or support for the child;

1929 (B) the whereabouts of the parent are unknown; and

1930 (C) reasonable efforts to locate the parent are unsuccessful;

1931 (ix) the child is in urgent need of medical care;

1932 (x) the physical environment or the fact that the child is left unattended beyond a

1933 reasonable period of time poses a threat to the child's health or safety;

1934 (xi) the child or a minor residing in the same household has been neglected;

1935 (xii) the parent, or an adult residing in the same household as the parent, is charged or

1936 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine

1937 laboratory operation was located in the residence or on the property where the child resided; or

1938 (xiii) the child's welfare is substantially endangered.

1939 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is

1940 established if:

1941 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency

1942 involving the parent; and

1943 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

1944 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly

1945 allowed the child to be in the physical care of a person after the parent received actual notice

1946 that the person physically or sexually abused the child, that fact constitutes prima facie

1947 evidence that there is a substantial risk that the child will be physically or sexually abused.

1948 (10) (a) (i) The court shall also make a determination on the record as to whether

1949 reasonable efforts were made to prevent or eliminate the need for removal of the child from the

1950 child's home and whether there are available services that would prevent the need for continued

1951 removal.

1952 (ii) If the court finds that the child can be safely returned to the custody of the child's  
1953 parent or guardian through the provision of those services, the court shall place the child with  
1954 the child's parent or guardian and order that those services be provided by the division.

1955 (b) In making the determination described in Subsection (10)(a), and in ordering and  
1956 providing services, the child's health, safety, and welfare shall be the paramount concern, in  
1957 accordance with federal law.

1958 (11) Where the division's first contact with the family occurred during an emergency  
1959 situation in which the child could not safely remain at home, the court shall make a finding that  
1960 any lack of preplacement preventive efforts was appropriate.

1961 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or  
1962 neglect are involved, neither the division nor the court has any duty to make "reasonable  
1963 efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to  
1964 the child's home, provide reunification services, or attempt to rehabilitate the offending parent  
1965 or parents.

1966 (13) The court may not order continued removal of a child solely on the basis of  
1967 educational neglect as described in Subsection ~~[78-3a-103]~~ 78A-5-105(1)(u)(ii).

1968 (14) (a) Whenever a court orders continued removal of a child under this section, the  
1969 court shall state the facts on which that decision is based.

1970 (b) If no continued removal is ordered and the child is returned home, the court shall  
1971 state the facts on which that decision is based.

1972 (15) If the court finds that continued removal and temporary custody are necessary for  
1973 the protection of a child because harm may result to the child if the child were returned home,  
1974 the court shall order continued removal regardless of:

1975 (a) any error in the initial removal of the child;

1976 (b) the failure of a party to comply with notice provisions; or

1977 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child  
1978 and Family Services.

1979 Section 38. Section **78A-5-306**, which is renumbered from Section 78-3a-307 is  
1980 renumbered and amended to read:

1981 ~~[78-3a-307]~~. **78A-5-306. Shelter hearing -- Placement -- DCFS custody.**



(1) (a) At the shelter hearing, when the court orders that a child be removed from the custody of the child's parent in accordance with the requirements of Section ~~[78-3a-306]~~ 78A-5-305, the court shall first determine whether there is another natural parent as defined in Subsection (1)(b), with whom the child was not residing at the time the events or conditions that brought the child within the court's jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the provisions of Subsection (8)(b).

(b) Notwithstanding the provisions of Section ~~[78-3a-103]~~ 78A-5-105, for purposes of this section "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of the child or voluntary surrender of the child by the custodial parent. This definition applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long term goal for the child.

(c) (i) The court shall make a specific finding regarding the fitness of that parent to assume custody, and the safety and appropriateness of the placement.

(ii) The court shall, at a minimum, order the division to visit the parent's home, perform criminal background checks described in Sections ~~[78-3a-307.1]~~ 78A-5-307 and 62A-4a-202.4, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall report its findings in writing to the court.

(v) The court may place the child in the temporary custody of the division, pending its determination regarding that placement.

(2) If the court orders placement with a parent under Subsection (1), the child and the parent are under the continuing jurisdiction of the court. The court may order that the parent assume custody subject to the supervision of the court, and order that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both. The court shall also provide for reasonable parent-time with the parent from whose

2013 custody the child was removed, unless parent-time is not in the best interest of the child. The  
2014 court's order shall be periodically reviewed to determine whether:

2015 (a) placement with the parent continues to be in the child's best interest;

2016 (b) the child should be returned to the original custodial parent;

2017 (c) the child should be placed with a relative, pursuant to Subsection (5); or

2018 (d) the child should be placed in the custody of the division.

2019 (3) The time limitations described in Section [~~78-3a-311~~] 78A-5-311 with regard to  
2020 reunification efforts, apply to children placed with a previously noncustodial parent in  
2021 accordance with Subsection (1).

2022 (4) Legal custody of the child is not affected by an order entered under Subsection (1)  
2023 or (2). In order to affect a previous court order regarding legal custody, the party must petition  
2024 that court for modification of the order.

2025 (5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of  
2026 the child's parent and is not placed in the custody of his other parent, the court shall, at that  
2027 time, determine whether, subject to Subsection (8)(c), there is a relative of the child or a friend  
2028 of a parent of the child who is able and willing to care for the child.

2029 (ii) The court may order the Division of Child and Family Services to conduct a  
2030 reasonable search to determine whether, subject to Subsection (8)(c), there are relatives of the  
2031 child or friends of a parent of the child who are willing and appropriate, in accordance with the  
2032 requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for  
2033 placement of the child. The court shall order the parents to cooperate with the division, within  
2034 five working days, to, subject to Subsection (8)(c), provide information regarding relatives of  
2035 the child or friends who may be able and willing to care for the child.

2036 (iii) The child may be placed in the temporary custody of the division pending the  
2037 determination under Subsection (5)(a)(ii).

2038 (iv) This section may not be construed as a guarantee that an identified relative or  
2039 friend will receive custody of the child. However, subject to Subsection (8)(c), preferential  
2040 consideration shall be given to a relative's or a friend's request for placement of the child, if it is  
2041 in the best interest of the child, and the provisions of this section are satisfied.

2042 (b) (i) If a willing relative or friend is identified pursuant to Subsection (5)(a), the court  
2043 shall make a specific finding regarding the fitness of that relative or friend to assume custody,

and the safety and appropriateness of placement with that relative or friend. In order to be considered a "willing relative or friend" under this section, the relative or friend shall be willing to cooperate if the child's permanency goal is reunification with his parent or parents, and be willing to adopt or take permanent custody of the child if that is determined to be in the best interest of the child.

(ii) The court shall, at a minimum, order the division to conduct criminal background checks described in Sections ~~[78-3a-307.1]~~ 78A-5-307 and 62A-4a-202.4, visit the relative's or friend's home, check the division's management information system for any previous reports of abuse or neglect regarding the relative or friend at issue, report its findings in writing to the court, and provide sufficient information so that the court may determine whether:

(A) the relative or friend has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;

(B) the child is comfortable with the relative or friend;

(C) the relative or friend recognizes the parent's history of abuse and is determined to protect the child;

(D) the relative or friend is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;

(E) the relative or friend is committed to caring for the child as long as necessary; and

(F) the relative or friend can provide a secure and stable environment for the child.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall complete and file its assessment regarding placement with a relative or friend as soon as practicable, in an effort to facilitate placement of the child with a relative or friend.

(c) The court may place the child in the temporary custody of the division, pending the division's investigation pursuant to Subsection (5)(b), and the court's determination regarding that placement. The court shall ultimately base its determination regarding placement with a relative or friend on the best interest of the child.

(d) For purposes of this section, "relative" means an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under

2075 the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended  
2076 family member" as defined by that statute.

2077 (6) (a) When the court vests physical custody of a child with a relative or friend  
2078 pursuant to Subsection (5), it shall order that the relative or friend assume custody subject to  
2079 the continuing supervision of the court, and shall order that any necessary services be provided  
2080 to the child and the relative or friend. That child is not within the temporary custody or  
2081 custody of the Division of Child and Family Services. The child and any relative or friend with  
2082 whom the child is placed are under the continuing jurisdiction of the court. The court may  
2083 enter any order that it considers necessary for the protection and best interest of the child. The  
2084 court shall provide for reasonable parent-time with the parent or parents from whose custody  
2085 the child was removed unless parent-time is not in the best interest of the child.

2086 (b) (i) Placement with a relative or friend pursuant to Subsection (5) shall be  
2087 periodically reviewed by the court, no less often than every six months, to determine whether:

2088 (A) placement with the relative or friend continues to be in the child's best interest;

2089 (B) the child should be returned home; or

2090 (C) the child should be placed in the custody of the division.

2091 (ii) No later than 12 months after placement with a relative or friend, the court shall  
2092 schedule a hearing for the purpose of entering a permanent order in accordance with the best  
2093 interest of the child.

2094 (iii) The time limitations described in Section [~~78-3a-311~~] 78A-5-311, with regard to  
2095 reunification efforts, apply to children placed with a relative or friend pursuant to Subsection  
2096 (5).

2097 (7) When the court orders that a child be removed from the custody of the child's  
2098 parent and does not vest custody in another parent, relative, or friend under this section, the  
2099 court shall order that the child be placed in the temporary custody of the Division of Child and  
2100 Family Services, to proceed to adjudication and disposition and to be provided with care and  
2101 services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

2102 (8) (a) Any preferential consideration that a relative or friend is initially granted  
2103 pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that  
2104 time period has expired, a relative or friend who has not obtained custody or asserted an  
2105 interest in a child, may not be granted preferential consideration by the division or the court.

(b) When the time period described in Subsection (8)(a) has expired, the preferential consideration which is initially granted to a natural parent in accordance with Subsection (1), is limited. After that time the court shall base its custody decision on the best interest of the child.

(c) (i) Prior to the expiration of the 120-day period described in Subsection (8)(a), the following order of preference shall be applied when determining the person with whom a child will be placed, provided that the person is willing, and has the ability, to care for the child:

(A) a noncustodial parent of the child;

(B) a relative of the child;

(C) subject to Subsection (8)(c)(ii), a friend of a parent of the child, if the friend is a licensed foster parent; and

(D) other placements that are consistent with the requirements of law.

(ii) In determining whether a friend is a willing and appropriate placement for a child, neither the court, nor the division, is required to consider more than one friend designated by each parent of the child.

(iii) If a parent of the child is not able to designate a friend who is a licensed foster parent for placement of the child, but is able to identify a friend who is willing to become licensed as a foster parent:

(A) the department shall fully cooperate to expedite the licensing process for the friend; and

(B) if the friend becomes licensed as a foster parent within the time frame described in Subsection (8)(a), the court shall determine whether it is in the best interests of the child to place the child in the physical custody of the friend.

(9) If, following the shelter hearing, the child is placed with a person who is not a parent of the child, a relative of the child, a friend of a parent of the child, or a former foster parent of the child, priority shall be given to a foster placement with a man and a woman who are married to each other, unless it is in the best interests of the child to place the child with a single foster parent.

(10) In determining the placement of a child, neither the court, nor the Division of Child and Family Services, may take into account, or discriminate against, the religion of a person with whom the child may be placed, unless the purpose of taking religion into account

2137 is to place the child with a person or family of the same religion as the child.

2138 Section 39. Section **78A-5-307**, which is renumbered from Section 78-3a-307.1 is  
2139 renumbered and amended to read:

2140 ~~[78-3a-307.1]~~. **78A-5-307. Criminal background checks necessary prior to**  
2141 **out-of-home placement.**

2142 (1) Upon ordering removal of a child from the custody of the child's parent and placing  
2143 that child in the custody of the Division of Child and Family Services, prior to the division's  
2144 placement of that child in out-of-home care, the court shall require the completion of a  
2145 background check by the Utah Bureau of Criminal Identification regarding the proposed  
2146 placement.

2147 (2) (a) The Division of Child and Family Services and the Office of the Guardian ad  
2148 Litem Director may request, or the court upon its own motion may order, the Department of  
2149 Public Safety to conduct a complete Federal Bureau of Investigation criminal background  
2150 check through the national criminal history system (NCIC).

2151 (b) Upon request by the Division of Child and Family Services or the Office of the  
2152 Guardian ad Litem Director, or upon the court's order, persons subject to the requirements of  
2153 Subsection (1) shall submit fingerprints and shall be subject to an FBI fingerprint background  
2154 check. The child may be temporarily placed, pending the outcome of that background check.

2155 (c) The cost of those investigations shall be borne by whoever is to receive placement  
2156 of the child, except that the Division of Child and Family Services may pay all or part of the  
2157 cost of those investigations if the person with whom the child is to be placed is unable to pay.

2158 (3) Notwithstanding any other provision of this section, except as otherwise permitted  
2159 by federal law or rule, a child who is in the legal custody of the state may not be placed with a  
2160 prospective foster parent or a prospective adoptive parent, unless, before the child is placed  
2161 with the prospective foster parent or the prospective adoptive parent:

2162 (a) a fingerprint based FBI national criminal history records check is conducted on the  
2163 prospective foster parent or prospective adoptive parent and each adult living in the home of  
2164 the prospective foster parent or prospective adoptive parent;

2165 (b) the Department of Human Services conducts a check of the child abuse and neglect  
2166 registry in each state where the prospective foster parent or prospective adoptive parent resided  
2167 in the five years immediately preceding the day on which the prospective foster parent or

prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect;

(c) the Department of Human Services conducts a check of the child abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (3)(b) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(d) each person required to undergo a background check described in this Subsection (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

Section 40. Section **78A-5-308**, which is renumbered from Section 78-3a-308 is renumbered and amended to read:

~~[78-3a-308].~~        **78A-5-308. Pretrial and adjudication hearing -- Time deadlines.**

(1) Upon the filing of a petition, the clerk of the court shall set the pretrial hearing on the petition within 15 calendar days from the later of:

- (a) the date of the shelter hearing; or
- (b) the filing of the petition.

(2) The pretrial may be continued upon motion of any party, for good cause shown, but the final adjudication hearing shall be held no later than 60 calendar days from the later of:

- (a) the date of the shelter hearing; or
- (b) the filing of the petition.

Section 41. Section **78A-5-309**, which is renumbered from Section 78-3a-309 is renumbered and amended to read:

~~[78-3a-309].~~        **78A-5-309. Notice of adjudication hearing.**

(1) Upon the filing of a petition pursuant to Section ~~[78-3a-305]~~ **78A-5-303**, the petitioner shall cause the petition and notice to be served on:

- (a) the guardian ad litem;
- (b) both parents and any guardian of the child; and
- (c) the child's foster parents.

(2) The notice shall contain all of the following:

(a) the name and address of the person to whom the notice is directed;

(b) the date, time, and place of the hearing on the petition;

(c) the name of the child on whose behalf the petition has been brought;

(d) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the hearing on the petition, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and

(e) a statement that the parent or legal guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and for legal counsel appointed for the parent or guardian under Subsection (2)(d), according to the parent's or guardian's financial ability.

(3) Notice and a copy of the petition shall be served on all persons required to receive notice under Subsection (1) as soon as possible after the petition is filed and at least five days prior to the time set for the hearing.

Section 42. Section **78A-5-310**, which is renumbered from Section 78-3a-310 is renumbered and amended to read:

**~~[78-3a-310].~~            78A-5-310. Adjudication -- Dispositional hearing -- Time deadlines.**

(1) If, at the adjudication hearing, the court finds, by clear and convincing evidence, that the allegations contained in the petition are true, it shall conduct a dispositional hearing.

(2) The dispositional hearing may be held on the same date as the adjudication hearing, but shall be held no later than 30 calendar days after the date of the adjudication hearing.

(3) At the adjudication hearing or the dispositional hearing the court shall schedule dates and times for:

(a) the six-month periodic review; and

(b) the permanency hearing.

Section 43. Section **78A-5-311**, which is renumbered from Section 78-3a-311 is renumbered and amended to read:

**~~[78-3a-311].~~            78A-5-311. Dispositional hearing -- Reunification services -- Exceptions.**



- 2230 (1) The court may:
- 2231 (a) make any of the dispositions described in Section ~~[78-3a-118]~~ 78A-5-117;
- 2232 (b) place the minor in the custody or guardianship of any:
- 2233 (i) individual; or
- 2234 (ii) public or private entity or agency; or
- 2235 (c) order:
- 2236 (i) protective supervision;
- 2237 (ii) family preservation;
- 2238 (iii) subject to Subsection ~~[78-3a-118]~~ 78A-5-117(2)(n)(iii), medical or mental health
- 2239 treatment; or
- 2240 (iv) other services.
- 2241 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
- 2242 and that the minor remain in the custody of the division, the court shall first:
- 2243 (A) establish a primary permanency goal for the minor; and
- 2244 (B) determine whether, in view of the primary permanency goal, reunification services
- 2245 are appropriate for the minor and the minor's family, pursuant to Subsection (3).
- 2246 (ii) Subject to Subsection (2)(b), if the court determines that reunification services are
- 2247 appropriate for the minor and the minor's family, the court shall provide for reasonable
- 2248 parent-time with the parent or parents from whose custody the minor was removed, unless
- 2249 parent-time is not in the best interest of the minor.
- 2250 (iii) (A) In cases where obvious sexual abuse, abandonment, or serious physical abuse
- 2251 or neglect are involved, neither the division nor the court has any duty to make "reasonable
- 2252 efforts" or to, in any other way, attempt to provide reunification services, or to attempt to
- 2253 rehabilitate the offending parent or parents.
- 2254 (B) In all cases, the minor's health, safety, and welfare shall be the court's paramount
- 2255 concern in determining whether reasonable efforts to reunify should be made.
- 2256 (b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a
- 2257 minor unless the court makes a finding that it is necessary to deny parent-time in order to:
- 2258 (A) protect the physical safety of the minor;
- 2259 (B) protect the life of the minor; or
- 2260 (C) prevent the minor from being traumatized by contact with the parent due to the

2261 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

2262 (ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based

2263 solely on a parent's failure to:

2264 (A) prove that the parent has not used legal or illegal substances; or

2265 (B) comply with an aspect of the child and family plan that is ordered by the court.

2266 (c) (i) In addition to the primary permanency goal, the court shall establish a concurrent

2267 permanency goal that shall include:

2268 (A) a representative list of the conditions under which the primary permanency goal

2269 will be abandoned in favor of the concurrent permanency goal; and

2270 (B) an explanation of the effect of abandoning or modifying the primary permanency

2271 goal.

2272 (ii) A permanency hearing shall be conducted in accordance with Subsection

2273 ~~[78-3a-312]~~ 78A-5-313(1)(b) within 30 days if something other than reunification is initially

2274 established as a minor's primary permanency goal.

2275 (iii) (A) The court may amend a minor's primary permanency goal before the

2276 establishment of a final permanency plan under Section ~~[78-3a-312]~~ 78A-5-313.

2277 (B) The court is not limited to the terms of the concurrent permanency goal in the event

2278 that the primary permanency goal is abandoned.

2279 (C) If, at any time, the court determines that reunification is no longer a minor's

2280 primary permanency goal, the court shall conduct a permanency hearing in accordance with

2281 Section ~~[78-3a-312]~~ 78A-5-313 on or before the earlier of:

2282 (I) 30 days from the day on which the court makes the determination described in this

2283 Subsection (2)(c)(iii)(C); or

2284 (II) 12 months from the day on which the minor was first removed from the minor's

2285 home.

2286 (d) (i) (A) If the court determines that reunification services are appropriate, it shall

2287 order that the division make reasonable efforts to provide services to the minor and the minor's

2288 parent for the purpose of facilitating reunification of the family, for a specified period of time.

2289 (B) In providing the services described in Subsection (2)(d)(i)(A), the minor's health,

2290 safety, and welfare shall be the division's paramount concern, and the court shall so order.

2291 (ii) The court shall:

2292 (A) determine whether the services offered or provided by the division under the child  
2293 and family plan constitute "reasonable efforts" on the part of the division;

2294 (B) determine and define the responsibilities of the parent under the child and family  
2295 plan in accordance with Subsection 62A-4a-205(6)(e); and

2296 (C) identify on the record the responsibilities described in Subsection (2)(d)(ii)(B), for  
2297 the purpose of assisting in any future determination regarding the provision of reasonable  
2298 efforts, in accordance with state and federal law.

2299 (iii) (A) The time period for reunification services may not exceed 12 months from the  
2300 date that the minor was initially removed from the minor's home.

2301 (B) Nothing in this section may be construed to entitle any parent to an entire 12  
2302 months of reunification services.

2303 (iv) If reunification services are ordered, the court may terminate those services at any  
2304 time.

2305 (v) If, at any time, continuation of reasonable efforts to reunify a minor is determined  
2306 to be inconsistent with the final permanency plan for the minor established pursuant to Section  
2307 ~~[78-3a-312]~~ 78A-5-313, then measures shall be taken, in a timely manner, to:

2308 (A) place the minor in accordance with the permanency plan; and

2309 (B) complete whatever steps are necessary to finalize the permanent placement of the  
2310 minor.

2311 (e) Any physical custody of the minor by the parent or a relative during the period  
2312 described in Subsection (2)(d) does not interrupt the running of the period.

2313 (f) (i) If reunification services are ordered, a permanency hearing shall be conducted by  
2314 the court in accordance with Section ~~[78-3a-312]~~ 78A-5-313 at the expiration of the time  
2315 period for reunification services.

2316 (ii) The permanency hearing shall be held no later than 12 months after the original  
2317 removal of the minor.

2318 (iii) If reunification services are not ordered, a permanency hearing shall be conducted  
2319 within 30 days, in accordance with Section ~~[78-3a-312]~~ 78A-5-313.

2320 (g) With regard to a minor who is 36 months of age or younger at the time the minor is  
2321 initially removed from the home, the court shall:

2322 (i) hold a permanency hearing eight months after the date of the initial removal,

2323 pursuant to Section ~~[78-3a-312]~~ 78A-5-313; and

2324 (ii) order the discontinuance of those services after eight months from the initial  
2325 removal of the minor from the home if the parent or parents have not made substantial efforts  
2326 to comply with the child and family plan.

2327 (h) With regard to a minor in the custody of the division whose parent or parents are  
2328 ordered to receive reunification services but who have abandoned that minor for a period of six  
2329 months from the date that reunification services were ordered:

2330 (i) the court shall terminate reunification services; and

2331 (ii) the division shall petition the court for termination of parental rights.

2332 (3) (a) Because of the state's interest in and responsibility to protect and provide  
2333 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a  
2334 parent's interest in receiving reunification services is limited.

2335 (b) The court may determine that:

2336 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,  
2337 based on the individual circumstances; and

2338 (ii) reunification services should not be provided.

2339 (c) In determining "reasonable efforts" to be made with respect to a minor, and in  
2340 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount  
2341 concern.

2342 (d) (i) There is a presumption that reunification services should not be provided to a  
2343 parent if the court finds, by clear and convincing evidence, that any of the following  
2344 circumstances exist:

2345 (A) the whereabouts of the parents are unknown, based upon a verified affidavit  
2346 indicating that a reasonably diligent search has failed to locate the parent;

2347 (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such  
2348 magnitude that it renders the parent incapable of utilizing reunification services;

2349 (C) the minor was previously adjudicated as an abused child due to physical or sexual  
2350 abuse, and following the adjudication the minor:

2351 (I) was removed from the custody of the minor's parent;

2352 (II) was subsequently returned to the custody of the parent; and

2353 (III) is being removed due to additional physical or sexual abuse;

- 2354 (D) the parent:
- 2355 (I) caused the death of another minor through abuse or neglect; or
- 2356 (II) committed, aided, abetted, attempted, conspired, or solicited to commit:
- 2357 (Aa) murder or manslaughter of a child; or
- 2358 (Bb) child abuse homicide;
- 2359 (E) the minor suffered severe abuse by the parent or by any person known by the
- 2360 parent, if the parent knew or reasonably should have known that the person was abusing the
- 2361 minor;
- 2362 (F) the minor is adjudicated an abused child as a result of severe abuse by the parent,
- 2363 and the court finds that it would not benefit the minor to pursue reunification services with the
- 2364 offending parent;
- 2365 (G) the parent's rights are terminated with regard to any other minor;
- 2366 (H) the minor is removed from the minor's home on at least two previous occasions
- 2367 and reunification services were offered or provided to the family at those times;
- 2368 (I) the parent has abandoned the minor for a period of six months or longer;
- 2369 (J) the parent permitted the child to reside, on a permanent or temporary basis, at a
- 2370 location where the parent knew or should have known that a clandestine laboratory operation
- 2371 was located; or
- 2372 (K) any other circumstance that the court determines should preclude reunification
- 2373 efforts or services.
- 2374 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
- 2375 from at least two medical or mental health professionals, who are not associates, establishing
- 2376 that, even with the provision of services, the parent is not likely to be capable of adequately
- 2377 caring for the minor within 12 months from the day on which the court finding is made.
- 2378 (4) In determining whether reunification services are appropriate, the court shall take
- 2379 into consideration:
- 2380 (a) failure of the parent to respond to previous services or comply with a previous child
- 2381 and family plan;
- 2382 (b) the fact that the minor was abused while the parent was under the influence of
- 2383 drugs or alcohol;
- 2384 (c) any history of violent behavior directed at the child or an immediate family

2385 member;

2386 (d) whether a parent continues to live with an individual who abused the minor;

2387 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

2388 (f) testimony by a competent professional that the parent's behavior is unlikely to be

2389 successful; and

2390 (g) whether the parent has expressed an interest in reunification with the minor.

2391 (5) (a) If reunification services are not ordered pursuant to Subsection (3)(a), and the

2392 whereabouts of a parent become known within six months of the out-of-home placement of the

2393 minor, the court may order the division to provide reunification services.

2394 (b) The time limits described in Subsection (2) are not tolled by the parent's absence.

2395 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable

2396 services unless it determines that those services would be detrimental to the minor.

2397 (b) In making the determination described in Subsection (6)(a), the court shall

2398 consider:

2399 (i) the age of the minor;

2400 (ii) the degree of parent-child bonding;

2401 (iii) the length of the sentence;

2402 (iv) the nature of the treatment;

2403 (v) the nature of the crime or illness;

2404 (vi) the degree of detriment to the minor if services are not offered;

2405 (vii) for a minor ten years of age or older, the minor's attitude toward the

2406 implementation of family reunification services; and

2407 (viii) any other appropriate factors.

2408 (c) Reunification services for an incarcerated parent are subject to the 12-month

2409 limitation imposed in Subsection (2).

2410 (d) Reunification services for an institutionalized parent are subject to the 12-month

2411 limitation imposed in Subsection (2), unless the court determines that continued reunification

2412 services would be in the minor's best interest.

2413 (7) If, pursuant to Subsections (3)(d)(i)(B) through (K), the court does not order

2414 reunification services, a permanency hearing shall be conducted within 30 days, in accordance

2415 with Section [~~78-3a-312~~] 78A-5-313.

Section 44. Section **78A-5-312**, which is renumbered from Section 78-3a-311.5 is renumbered and amended to read:

~~[78-3a-311.5].~~        **78A-5-312. Six-month review hearing -- Court determination regarding reasonable efforts by the Division of Child and Family Services and parental compliance with child and family plan requirements.**

If reunification efforts have been ordered by the court, a hearing shall be held no more than six months after initial removal of a minor from the minor's home, in order for the court to determine whether:

(1) the division has provided and is providing "reasonable efforts" to reunify a family, in accordance with the child and family plan established under Section 62A-4a-205; and

(2) the parent has fulfilled or is fulfilling identified duties and responsibilities in order to comply with the requirements of the child and family plan.

Section 45. Section **78A-5-313**, which is renumbered from Section 78-3a-312 is renumbered and amended to read:

~~[78-3a-312].~~        **78A-5-313. Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.**

(1) (a) When reunification services have been ordered in accordance with Section ~~[78-3a-311]~~ 78A-5-311, with regard to a minor who is in the custody of the Division of Child and Family Services, a permanency hearing shall be held by the court no later than 12 months after the original removal of the minor.

(b) If reunification services were not ordered at the dispositional hearing, a permanency hearing shall be held within 30 days from the date of the dispositional hearing.

(2) (a) If reunification services were ordered by the court in accordance with Section ~~[78-3a-311]~~ 78A-5-311, the court shall, at the permanency hearing, determine, consistent with Subsection (3), whether the minor may safely be returned to the custody of the minor's parent.

(b) If the court finds, by a preponderance of the evidence, that return of the minor would create a substantial risk of detriment to the minor's physical or emotional well-being, the minor may not be returned to the custody of the minor's parent.

(c) Prima facie evidence that return of the minor to a parent or guardian would create a substantial risk of detriment to the minor is established if the parent or guardian fails to:

(i) participate in a court approved child and family plan;

2447 (ii) comply with a court approved child and family plan in whole or in part; or  
2448 (iii) meet the goals of a court approved child and family plan.

2449 (3) In making a determination under Subsection (2)(a), the court shall review and  
2450 consider:

2451 (a) the report prepared by the Division of Child and Family Services;  
2452 (b) any admissible evidence offered by the minor's guardian ad litem;  
2453 (c) any report prepared by a foster care citizen review board pursuant to Section  
2454 ~~[78-3g-103]~~ 78B-9-103;

2455 (d) any evidence regarding the efforts or progress demonstrated by the parent; and  
2456 (e) the extent to which the parent cooperated and availed himself of the services  
2457 provided.

2458 (4) (a) With regard to a case where reunification services were ordered by the court, if  
2459 a minor is not returned to the minor's parent or guardian at the permanency hearing, the court  
2460 shall:

2461 (i) order termination of reunification services to the parent;  
2462 (ii) make a final determination regarding whether termination of parental rights,  
2463 adoption, or permanent custody and guardianship is the most appropriate final plan for the  
2464 minor, taking into account the minor's primary permanency goal established by the court  
2465 pursuant to Section ~~[78-3a-311]~~ 78A-5-311; and

2466 (iii) establish a concurrent plan that identifies the second most appropriate final plan  
2467 for the minor.

2468 (b) If the Division of Child and Family Services documents to the court that there is a  
2469 compelling reason that adoption, reunification, guardianship, and a placement described in  
2470 Subsection ~~[78-3a-306]~~ 78A-5-305(6)(e) are not in the minor's best interest, the court may  
2471 order another planned permanent living arrangement, in accordance with federal law.

2472 (c) If the minor clearly desires contact with the parent, the court shall take the minor's  
2473 desire into consideration in determining the final plan.

2474 (d) Consistent with Subsection (4)(e), the court may not extend reunification services  
2475 beyond 12 months from the date the minor was initially removed from the minor's home, in  
2476 accordance with the provisions of Section ~~[78-3a-311]~~ 78A-5-311, except that the court may  
2477 extend reunification services for no more than 90 days if the court finds that:



2478 (i) there has been substantial compliance with the child and family plan;  
2479 (ii) reunification is probable within that 90-day period; and  
2480 (iii) the extension is in the best interest of the minor.

2481 (e) (i) In no event may any reunification services extend beyond 15 months from the  
2482 date the minor was initially removed from the minor's home.

2483 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a  
2484 basis for the court to extend services for that parent beyond that 12-month period.

2485 (f) The court may, in its discretion:

2486 (i) enter any additional order that it determines to be in the best interest of the minor,  
2487 so long as that order does not conflict with the requirements and provisions of Subsections  
2488 (4)(a) through (e); or

2489 (ii) order the division to provide protective supervision or other services to a minor and  
2490 the minor's family after the division's custody of a minor has been terminated.

2491 (5) If the final plan for the minor is to proceed toward termination of parental rights,  
2492 the petition for termination of parental rights shall be filed, and a pretrial held, within 45  
2493 calendar days after the permanency hearing.

2494 (6) (a) Any party to an action may, at any time, petition the court for an expedited  
2495 permanency hearing on the basis that continuation of reunification efforts are inconsistent with  
2496 the permanency needs of the minor.

2497 (b) If the court so determines, it shall order, in accordance with federal law, that:

2498 (i) the minor be placed in accordance with the permanency plan; and  
2499 (ii) whatever steps are necessary to finalize the permanent placement of the minor be  
2500 completed as quickly as possible.

2501 (7) Nothing in this section may be construed to:

2502 (a) entitle any parent to reunification services for any specified period of time;  
2503 (b) limit a court's ability to terminate reunification services at any time prior to a  
2504 permanency hearing; or

2505 (c) limit or prohibit the filing of a petition for termination of parental rights by any  
2506 party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.

2507 (8) (a) Subject to Subsection (8)(b), if a petition for termination of parental rights is  
2508 filed prior to the date scheduled for a permanency hearing, the court may consolidate the

2509 hearing on termination of parental rights with the permanency hearing.

2510 (b) For purposes of Subsection (8)(a), if the court consolidates the hearing on  
2511 termination of parental rights with the permanency hearing:

2512 (i) the court shall first make a finding regarding whether reasonable efforts have been  
2513 made by the Division of Child and Family Services to finalize the permanency goal for the  
2514 minor; and

2515 (ii) any reunification services shall be terminated in accordance with the time lines  
2516 described in Section ~~[78-3a-311]~~ 78A-5-311.

2517 (c) A decision on a petition for termination of parental rights shall be made within 18  
2518 months from the day on which the minor is removed from the minor's home.

2519 (9) If a court determines that a child will not be returned to a parent of the child, the  
2520 court shall consider appropriate placement options inside and outside of the state.

2521 Section 46. Section **78A-5-314**, which is renumbered from Section 78-3a-313 is  
2522 renumbered and amended to read:

2523 ~~[78-3a-313]~~. **78A-5-314. Periodic review hearings -- Foster care citizen**  
2524 **review boards.**

2525 (1) Pursuant to federal law, periodic review hearings shall be held no less frequently  
2526 than once every six months, either by the court or by a foster care citizen review board, in  
2527 accordance with the provisions of ~~[Chapter 3g]~~ Title 78B, Chapter 8, Part 1, Foster Care  
2528 Citizen Review Board. In districts or areas where foster care citizen review boards have not  
2529 been established, either the court or the Division of Child and Family Services shall conduct  
2530 the review. In districts where they are established, foster care citizen review boards shall be  
2531 considered to be the panels described in 42 U.S.C. Sections 675(5) and (6), which are required  
2532 to conduct periodic reviews unless court reviews are conducted.

2533 (2) (a) Within 30 days after completion of a review, a foster care citizen review board  
2534 shall submit a copy of its dispositional report to the court to be made a part of the court's legal  
2535 file, and provide copies to all parties to an action. In districts or areas where the Division of  
2536 Child and Family Services conducts a review, it shall provide copies of its report to the court  
2537 and to all parties within 30 days after completion of its review.

2538 (b) In accordance with Section ~~[78-3g-103]~~ 78B-8-103, dispositional reports of foster  
2539 care citizen review boards shall be received and reviewed by the court in the same manner as

the court receives and reviews the reports described in Section ~~[78-3a-505]~~ 78A-5-605. The report by a board, if determined to be an ex parte communication with a judge, shall be considered a communication authorized by law. Foster care citizen review board dispositional reports may be received as evidence, and may be considered by the court along with other evidence. The court may require any person who participated in the dispositional report to appear as a witness if the person is reasonably available.

Section 47. Section **78A-5-315**, which is renumbered from Section 78-3a-313.5 is renumbered and amended to read:

~~[78-3a-313.5].~~        **78A-5-315. Mandatory petition for termination of parental rights.**

(1) For purposes of this section, "abandoned infant" means a child who is 12 months of age or younger whose parent or parents:

(a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;

(b) have failed to:

(i) maintain physical custody; and

(ii) exhibit the normal interest of a natural parent without just cause; or

(c) are unwilling to have physical custody of the child.

(2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition for termination of parental rights with regard to:

(a) an abandoned infant; or

(b) the child of a parent, whenever a court has determined that the parent has:

(i) committed murder or child abuse homicide of another child of that parent;

(ii) committed manslaughter of another child of that parent;

(iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or

(iv) committed a felony assault or abuse that results in serious physical injury to:

(A) another child of that parent; or

(B) the other parent of the child.

(3) The division is not required to file a petition for termination of parental rights under

2571 Subsection (2) if:

2572 (a) the child is being cared for by a relative;

2573 (b) the division has:

2574 (i) documented in the child's child and family plan a compelling reason for determining  
2575 that filing a petition for termination of parental rights is not in the child's best interest; and

2576 (ii) made that child and family plan available to the court for its review; or

2577 (c) (i) the court has previously determined, in accordance with the provisions and

2578 limitations of Sections 62A-4a-201, 62A-4a-203, [~~78-3a-306~~] 78A-5-305, and [~~78-3a-311~~]

2579 78A-5-311, that reasonable efforts to reunify the child with the child's parent or parents were  
2580 required; and

2581 (ii) the division has not provided, within the time period specified in the child and  
2582 family plan, services that had been determined to be necessary for the safe return of the child.

2583 Section 48. Section **78A-5-316**, which is renumbered from Section 78-3a-314 is  
2584 renumbered and amended to read:

2585 ~~[78-3a-314].~~ **78A-5-316. All proceedings -- Persons entitled to be present.**

2586 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice  
2587 pursuant to Section [~~78-3a-306~~ or ~~78-3a-309~~] 78A-5-305 or 78A-5-309, preadoptive parents,  
2588 foster parents, and any relative providing care for the child, are:

2589 (a) entitled to notice of, and to be present at, each hearing and proceeding held under  
2590 this part, including administrative and citizen reviews; and

2591 (b) have a right to be heard at each hearing and proceeding described in Subsection  
2592 (1)(a).

2593 (2) A child shall be represented at each hearing by the guardian ad litem appointed to  
2594 the child's case by the court. The child has a right to be present at each hearing, subject to the  
2595 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

2596 (3) (a) The parent or guardian of a child who is the subject of a petition under this part  
2597 has the right to be represented by counsel, and to present evidence, at each hearing.

2598 (b) When it appears to the court that a parent or guardian of the child desires counsel  
2599 but is financially unable to afford and cannot for that reason employ counsel, and the child has  
2600 been placed in out-of-home care, or the petitioner is recommending that the child be placed in  
2601 out-of-home care, the court shall appoint counsel.

(4) In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section ~~[78-3a-912]~~ 78A-5-902. The guardian ad litem shall represent the best interest of the child, in accordance with the requirements of that section, at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part ~~[4]~~ 5, Termination of Parental Rights Act.

(5) Notwithstanding any other provision of law, counsel for all parties to the action shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter. If the natural parent of a child is representing himself, the natural parent shall have access to those records. The above disclosures are not required in the following circumstances:

(a) The division or other state or local public agency did not originally create the record being requested. In those circumstances, the person making the request under this section shall be informed of the following:

(i) the existence of all records in the possession of the division or any other state or local public agency;

(ii) the name and address of the person or agency that originally created the record; and

(iii) that the person must seek access to the record from the person or agency that originally created the record.

(b) Disclosure of the record would jeopardize the life or physical safety of a child who has been a victim of child abuse or neglect, or any person who provided substitute care for the child.

(c) Disclosure of the record would jeopardize the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent investigation.

(d) Disclosure of the record would jeopardize the life or physical safety of a person who has been a victim of domestic violence.

(6) (a) The appropriate foster care citizen review board shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to an abuse, neglect, or dependency proceeding under this chapter.

(b) Representatives of the appropriate foster care citizen review board are entitled to be

present at each hearing held under this part, but notice is not required to be provided.

Section 49. Section **78A-5-317**, which is renumbered from Section 78-3a-315 is renumbered and amended to read:

~~[78-3a-315].~~        **78A-5-317. Review of foster care removal -- Foster parent's standing.**

(1) With regard to a child in the custody of the Division of Child and Family Services who is the subject of a petition alleging abuse, neglect, or dependency, and who has been placed in foster care with a foster family, the Legislature finds that:

(a) except with regard to the child's natural parents, a foster family has a very limited but recognized interest in its familial relationship with the child; and

(b) children in the custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.

(2) For the reasons described in Subsection (1), the Legislature finds that, except with regard to the child's natural parents, procedural due process protections must be provided to a foster family prior to removal of a foster child from their home.

(3) (a) A foster parent who has had a foster child in his custody for 12 months or longer may petition the juvenile court for a review and determination of the appropriateness of a decision by the Division of Child and Family Services to remove the child from the child's home, unless the removal was for the purpose of:

(i) returning the child to the child's natural parent or legal guardian;

(ii) immediately placing the child in an approved adoptive home;

(iii) placing the child with a relative, as defined in Subsection ~~[78-3a-307]~~ **78A-5-306(5)(d)**, who obtained custody or asserted an interest in the child within the preference period described in Subsection ~~[78-3a-307]~~ **78A-5-306(8)**; or

(iv) placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

(b) The foster parent may petition the court under this section without exhausting administrative remedies within the division.

(c) The court may order the division to place the child in a specified home, and shall base its determination on the best interest of the child.

(4) The requirements of this section do not apply to the removal of a child based on a foster parent's request for that removal.

Section 50. Section **78A-5-318**, which is renumbered from Section 78-3a-316 is renumbered and amended to read:

~~[78-3a-316].~~        **78A-5-318. Educational neglect of a child -- Procedures -- Defenses.**

(1) With regard to a child who is the subject of a petition under this chapter based on educational neglect:

(a) if allegations include failure of a child to make adequate educational progress, the court shall permit demonstration of the child's educational skills and abilities based upon any of the criteria used in granting school credit, in accordance with Section 53A-11-102.5;

(b) parental refusal to comply with actions taken by school authorities in violation of Sections 53A-13-101.1, 53A-13-101.2, or 53A-13-101.3, does not constitute educational neglect;

(c) parental refusal to support efforts by a school to encourage a child to act in accordance with any educational objective that focuses on the adoption or expression of a personal philosophy, attitude, or belief that is not reasonably necessary to maintain order and discipline in the school, prevent unreasonable endangerment of persons or property, or to maintain concepts of civility and propriety appropriate to a school setting, does not constitute educational neglect; and

(d) an allegation of educational neglect may not be sustained, based solely on a child's absence from school, unless the child has been absent from school or from any given class, without good cause, for more than ten consecutive school days or more than 1/16 of the applicable school term.

(2) A child may not be considered to be educationally neglected, for purposes of this chapter:

(a) unless there is clear and convincing evidence that:

(i) the child has failed to make adequate educational progress, and school officials have complied with the requirements of Section 53A-11-103; and

(ii) the child is two or more years behind the local public school's age group expectations in one or more basic skills, and is not receiving special educational services or

2695 systematic remediation efforts designed to correct the problem;  
2696 (b) if the child's parent or guardian establishes by a preponderance of the evidence that:  
2697 (i) school authorities have failed to comply with the requirements of Title 53A,  
2698 Chapter 11 or 13;  
2699 (ii) the child is being instructed at home in compliance with Section 53A-11-102;  
2700 (iii) there is documentation that the child has demonstrated educational progress at a  
2701 level commensurate with the child's ability;  
2702 (iv) the parent, guardian, or other person in control of the child has made a good faith  
2703 effort to secure the child's regular attendance in school;  
2704 (v) good cause or a valid excuse exists for the child's absence from school;  
2705 (vi) the child is not required to attend school pursuant to court order or is exempt under  
2706 other applicable state or federal law;  
2707 (vii) the student has performed above the twenty-fifth percentile of the local public  
2708 school's age group expectations in all basic skills, as measured by a standardized academic  
2709 achievement test administered by the school district where the student resides; or  
2710 (viii) the parent or guardian has proffered a reasonable alternative to required school  
2711 curriculum, in accordance with Section 53A-13-101.2, that alternative was rejected by the  
2712 school district, but the parents have implemented the alternative curriculum; or  
2713 (c) if the child is attending school on a regular basis.

2714 Section 51. Section **78A-5-319**, which is renumbered from Section 78-3a-316.1 is  
2715 renumbered and amended to read:

2716 ~~[78-3a-316.1].~~ **78A-5-319.** **Proceedings arising from failure to attend public**  
2717 **school.**

2718 (1) When a proceeding arises from a child's failure to attend public school based upon  
2719 the assertion of a constitutional or statutory right or duty, raised either by the child or by the  
2720 child's custodial parent, guardian, or custodian, the court shall hear the petition and resolve the  
2721 issues associated with the asserted constitutional or statutory claims within 15 days after the  
2722 petition is filed. The parties may waive the time limitation described in this subsection.

2723 (2) Absent an emergency situation or other exigent circumstances, the court may not  
2724 enter any order changing the educational status of the child that existed at the time the petition  
2725 was filed, until the hearing described in Subsection (1) is concluded.



(3) Parties proceeding under this section shall, insofar as it is possible, provide the court with factual stipulations and make all other efforts that are reasonably available to minimize the time required to hear the claims described in Subsection (1).

Section 52. Section **78A-5-320**, which is renumbered from Section 78-3a-318 is renumbered and amended to read:

~~[78-3a-318].~~        **78A-5-320. Treatment for offender and victim -- Costs.**

(1) Upon adjudication in the juvenile court of a person or persons charged with child abuse or child sexual abuse, the court may order treatment for the adjudicated offender and the victim or the child victim.

(2) The adjudicated offender shall be required by the court to pay, to the extent that he is able, the costs of that treatment together with the administrative costs incurred by the division in monitoring completion of the ordered therapy or treatment.

(3) If the adjudicated offender is unable to pay the full cost of treatment, the court may order the Division of Child and Family Services to pay those costs, to the extent that funding is provided by the Legislature for that purpose, and the offender shall be required by the court to perform public service work as compensation for the cost of treatment.

Section 53. Section **78A-5-321**, which is renumbered from Section 78-3a-319 is renumbered and amended to read:

~~[78-3a-319].~~        **78A-5-321. Abuse, neglect, or dependency of child -- Coordination of proceedings.**

(1) In each case where an information or indictment has been filed against a defendant concerning abuse, neglect, or dependency of a child, and a petition has been filed in juvenile court concerning the victim, the appropriate county attorney's or district attorney's office shall coordinate with the attorney general's office.

(2) Law enforcement personnel, Division of Child and Family Services personnel, the appointed guardian ad litem, pretrial services personnel, and corrections personnel shall make reasonable efforts to facilitate the coordination required by this section.

(3) Members of interdisciplinary child protection teams, established under Section 62A-4a-409, may participate in the coordination required by this section.

Section 54. Section **78A-5-322**, which is renumbered from Section 78-3a-320 is renumbered and amended to read:

**~~[78-3a-320].~~                    78A-5-322. Additional finding at adjudication hearing --  
Petition -- Court records.**

(1) Upon the filing with the court of a petition under Section ~~[78-3a-305]~~ 78A-5-303 by the Division of Child and Family Services or any interested person informing the court, among other things, that the division has made a supported finding that a person committed a severe type of child abuse or neglect as defined in Section 62A-4a-1002, the court shall:

- (a) make a finding of substantiated, unsubstantiated, or without merit;
- (b) include the finding described in Subsection (1)(a) in a written order; and
- (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

(2) The judicial finding under Subsection (1) shall be made:

- (a) as part of the adjudication hearing;
- (b) at the conclusion of the adjudication hearing; or
- (c) as part of a court order entered pursuant to a written stipulation of the parties.

(3) (a) Any person described in Subsection 62A-4a-1010(1) may at any time file with the court a petition for removal of the person's name from the Licensing Information System.

(b) At the conclusion of the hearing on the petition, the court shall:

- (i) make a finding of substantiated, unsubstantiated, or without merit;
- (ii) include the finding described in Subsection (1)(a) in a written order; and
- (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.

(4) A proceeding for adjudication of a supported finding under this section of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined in the juvenile court with an adjudication of a severe type of child abuse or neglect.

(5) If a person whose name appears on the Licensing Information system prior to May 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter and enter a final decision no later than 60 days after the filing of the petition.

(6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118, and for the purposes described in Section 62A-2-121:

(a) the court shall make available records of its findings under Subsections (1) and (2) for licensing purposes, only to those with statutory authority to access also the Licensing Information System created under Section 62A-4a-1006; and

(b) any appellate court shall make available court records of appeals from juvenile court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those with statutory authority to access also the Licensing Information System.

Section 55. Section **78A-5-323**, which is renumbered from Section 78-3a-321 is renumbered and amended to read:

~~[78-3a-321].~~        **78A-5-323. Mental health therapists.**

(1) When a mental health practitioner is appointed in any juvenile court proceeding to evaluate the mental health of a parent or a minor, or to provide mental health services to a parent or minor, the court:

(a) may appoint any mental health therapist, as defined in Section 58-60-102, which the court finds to be qualified; and

(b) may not refuse to appoint a mental health therapist for the reason that the therapist's recommendations in another case have not followed the recommendations of the Division of Child and Family Services.

(2) This section applies to all juvenile court proceedings involving:

(a) parents and minors; or

(b) the Division of Child and Family Services.

Section 56. Section **78A-5-401**, which is renumbered from Section 78-3a-350 is renumbered and amended to read:

~~[78-3a-350].~~        **78A-5-401. Separate procedures for minors committed to the Division of Child and Family Services on grounds other than abuse or neglect -- Attorney general responsibility.**

(1) The processes and procedures described in Part 3, Abuse, Neglect, and Dependency Proceedings, designed to meet the needs of minors who are abused or neglected, are not applicable to a minor who is committed to the custody of the Division of Child and Family Services on a basis other than abuse or neglect and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense.

(2) The procedures described in Subsection ~~[78-3a-119]~~ **78A-5-118(2)(a)** are applicable to a minor described in Subsection (1).

(3) The court may appoint a guardian ad litem to represent the interests of a minor

described in Subsection (1), upon request of the minor or the minor's parent or guardian.

(4) As of July 1, 1998, the attorney general's office shall represent the Division of Child and Family Services with regard to actions involving a minor who has not been adjudicated as abused or neglected, but who is otherwise committed to the custody of the division by the juvenile court, and who is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in Subsection (3) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Section ~~[78-3a-116]~~ 78A-5-115.

Section 57. Section **78A-5-501**, which is renumbered from Section 78-3a-401 is renumbered and amended to read:

**Part 5. Termination of Parental Rights Act**

~~[78-3a-401].~~ **78A-5-501. Title.**

This part ~~[shall be]~~ is known as the "Termination of Parental Rights Act."

Section 58. Section **78A-5-502**, which is renumbered from Section 78-3a-403 is renumbered and amended to read:

~~[78-3a-403].~~ **78A-5-502. Definitions.**

As used in this chapter:

(1) "Division" means the Division of Child and Family Services within the Department of Human Services.

(2) "Failure of parental adjustment" means that a parent or parents are unable or unwilling within a reasonable time to substantially correct the circumstances, conduct, or conditions that led to placement of their child outside of their home, notwithstanding reasonable and appropriate efforts made by the Division of Child and Family Services to return the child to that home.

(3) "Plan" means a written agreement between the parents of a child, who has been removed from his home by the juvenile court, and the Division of Child and Family Services or written conditions and obligations imposed upon the parents directly by the juvenile court, that have a primary objective of reuniting the family or, if the parents neglect or refuse to comply with the terms and conditions of the case plan, freeing the child for adoption.

Section 59. Section **78A-5-503**, which is renumbered from Section 78-3a-402 is

2850 renumbered and amended to read:

2851 ~~[78-3a-402].~~ **78A-5-503. Judicial process for termination -- Parent unfit**  
2852 **or incompetent -- Best interest of child.**

2853 (1) This part provides a judicial process for voluntary and involuntary severance of the  
2854 parent-child relationship, designed to safeguard the rights and interests of all parties concerned  
2855 and promote their welfare and that of the state.

2856 (2) Wherever possible family life should be strengthened and preserved, but if a parent  
2857 is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of  
2858 the grounds for termination described in this part, the court shall then consider the welfare and  
2859 best interest of the child of paramount importance in determining whether termination of  
2860 parental rights shall be ordered.

2861 Section 60. Section **78A-5-504**, which is renumbered from Section 78-3a-404 is  
2862 renumbered and amended to read:

2863 ~~[78-3a-404].~~ **78A-5-504. Petition -- Who may file.**

2864 (1) Any interested party, including a foster parent, may file a petition for termination of  
2865 the parent-child relationship with regard to a child.

2866 (2) The attorney general shall file a petition for termination of parental rights under this  
2867 part on behalf of the division.

2868 Section 61. Section **78A-5-505**, which is renumbered from Section 78-3a-405 is  
2869 renumbered and amended to read:

2870 ~~[78-3a-405].~~ **78A-5-505. Contents of petition.**

2871 (1) The petition for termination of parental rights shall include, to the best information  
2872 or belief of the petitioner:

2873 (a) the name and place of residence of the petitioner;

2874 (b) the name, sex, date and place of birth, and residence of the child;

2875 (c) the relationship of the petitioner to the child;

2876 (d) the names, addresses, and dates of birth of the parents, if known;

2877 (e) the name and address of the person having legal custody or guardianship, or acting  
2878 in loco parentis to the child, or the organization or agency having legal custody or providing  
2879 care for the child;

2880 (f) the grounds on which termination of parental rights is sought, in accordance with

2881 Section [~~78-3a-407~~] 78A-5-507; and

2882 (g) the names and addresses of the persons or the authorized agency to whom legal  
2883 custody or guardianship of the child might be transferred.

2884 (2) A copy of any relinquishment or consent, if any, previously executed by the parent  
2885 or parents shall be attached to the petition.

2886 Section 62. Section **78A-5-506**, which is renumbered from Section 78-3a-406 is  
2887 renumbered and amended to read:

2888 ~~[78-3a-406]~~. **78A-5-506. Notice -- Nature of proceedings.**

2889 (1) After a petition for termination of parental rights has been filed, notice of that fact  
2890 and of the time and place of the hearing shall be provided, in accordance with the Utah Rules  
2891 of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of  
2892 the child, and to any person acting in loco parentis to the child.

2893 (2) A hearing shall be held specifically on the question of termination of parental rights  
2894 no sooner than ten days after service of summons is complete. A verbatim record of the  
2895 proceedings shall be taken and the parties shall be advised of their right to counsel. The  
2896 summons shall contain a statement to the effect that the rights of the parent or parents are  
2897 proposed to be permanently terminated in the proceedings. That statement may be contained in  
2898 the summons originally issued in the proceeding or in a separate summons subsequently issued.

2899 (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil  
2900 Procedure. The court shall in all cases require the petitioner to establish the facts by clear and  
2901 convincing evidence, and shall give full and careful consideration to all of the evidence  
2902 presented with regard to the constitutional rights and claims of the parent and, if a parent is  
2903 found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the  
2904 grounds for termination described in this part, the court shall then consider the welfare and best  
2905 interest of the child of paramount importance in determining whether termination of parental  
2906 rights shall be ordered.

2907 Section 63. Section **78A-5-507**, which is renumbered from Section 78-3a-407 is  
2908 renumbered and amended to read:

2909 ~~[78-3a-407]~~. **78A-5-507. Grounds for termination of parental rights --**  
2910 **Findings regarding reasonable efforts.**

2911 (1) The court may terminate all parental rights with respect to a parent if the court finds

2912 any one of the following:

2913 (a) that the parent has abandoned the child;

2914 (b) that the parent has neglected or abused the child;

2915 (c) that the parent is unfit or incompetent;

2916 (d) (i) that the child is being cared for in an out-of-home placement under the

2917 supervision of the court or the division;

2918 (ii) that the parent has substantially neglected, wilfully refused, or has been unable or

2919 unwilling to remedy the circumstances that cause the child to be in an out-of-home placement;

2920 and

2921 (iii) that there is a substantial likelihood that the parent will not be capable of

2922 exercising proper and effective parental care in the near future;

2923 (e) failure of parental adjustment, as defined in this chapter;

2924 (f) that only token efforts have been made by the parent:

2925 (i) to support or communicate with the child;

2926 (ii) to prevent neglect of the child;

2927 (iii) to eliminate the risk of serious physical, mental, or emotional abuse of the child; or

2928 (iv) to avoid being an unfit parent;

2929 (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the

2930 child; and

2931 (ii) that termination is in the child's best interest;

2932 (h) that, after a period of trial during which the child was returned to live in the child's

2933 own home, the parent substantially and continuously or repeatedly refused or failed to give the

2934 child proper parental care and protection; or

2935 (i) the terms and conditions of safe relinquishment of a newborn child have been

2936 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn

2937 Child.

2938 (2) The court may not terminate the parental rights of a parent because the parent has

2939 failed to complete the requirements of a child and family plan.

2940 (3) (a) Except as provided in Subsection (3)(b), in any case in which the court has

2941 directed the division to provide reunification services to a parent, the court must find that the

2942 division made reasonable efforts to provide those services before the court may terminate the

2943 parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

2944 (b) Notwithstanding Subsection (3)(a), the court is not required to make the finding  
2945 under Subsection (3)(a) before terminating a parent's rights:

2946 (i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred  
2947 subsequent to adjudication; or

2948 (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not  
2949 required under federal law.

2950 Section 64. Section **78A-5-508**, which is renumbered from Section 78-3a-408 is  
2951 renumbered and amended to read:

2952 ~~[78-3a-408].~~ **78A-5-508. Evidence of grounds for termination.**

2953 (1) In determining whether a parent or parents have abandoned a child, it is prima facie  
2954 evidence of abandonment that the parent or parents:

2955 (a) although having legal custody of the child, have surrendered physical custody of the  
2956 child, and for a period of six months following the surrender have not manifested to the child  
2957 or to the person having the physical custody of the child a firm intention to resume physical  
2958 custody or to make arrangements for the care of the child;

2959 (b) have failed to communicate with the child by mail, telephone, or otherwise for six  
2960 months;

2961 (c) failed to have shown the normal interest of a natural parent, without just cause; or

2962 (d) have abandoned an infant, as described in Subsection ~~[78-3a-313.5]~~ 78A-5-315(1).

2963 (2) In determining whether a parent or parents are unfit or have neglected a child the  
2964 court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

2965 (a) emotional illness, mental illness, or mental deficiency of the parent that renders the  
2966 parent unable to care for the immediate and continuing physical or emotional needs of the child  
2967 for extended periods of time;

2968 (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive  
2969 nature;

2970 (c) habitual or excessive use of intoxicating liquors, controlled substances, or  
2971 dangerous drugs that render the parent unable to care for the child;

2972 (d) repeated or continuous failure to provide the child with adequate food, clothing,  
2973 shelter, education, or other care necessary for the child's physical, mental, and emotional health



and development by a parent or parents who are capable of providing that care;

(e) with regard to a child who is in the custody of the division, if the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year; or

(f) a history of violent behavior.

(3) A parent who, legitimately practicing the parent's religious beliefs, does not provide specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

(4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to obtain a second health care opinion.

(5) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.

(6) The following circumstances constitute prima facie evidence of unfitness:

(a) sexual abuse, injury, or death of a sibling of the child, or of any child, due to known or substantiated abuse or neglect by the parent or parents;

(b) conviction of a crime, if the facts surrounding the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's physical, mental, or emotional health and development;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child; or

(d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide.

Section 65. Section **78A-5-509**, which is renumbered from Section 78-3a-409 is renumbered and amended to read:

~~[78-3a-409].~~      **78A-5-509.** **Specific considerations where child is not in physical custody of parent.**

(1) If a child is not in the physical custody of the parent or parents, the court, in determining whether parental rights should be terminated shall consider, but is not limited to, the following:

(a) the physical, mental, or emotional condition and needs of the child and his desires regarding the termination, if the court determines he is of sufficient capacity to express his desires; and

(b) the effort the parent or parents have made to adjust their circumstances, conduct, or conditions to make it in the child's best interest to return him to his home after a reasonable length of time, including but not limited to:

(i) payment of a reasonable portion of substitute physical care and maintenance, if financially able;

(ii) maintenance of regular parent-time or other contact with the child that was designed and carried out in a plan to reunite the child with the parent or parents; and

(iii) maintenance of regular contact and communication with the custodian of the child.

(2) For purposes of this section, the court shall disregard incidental conduct, contributions, contacts, and communications.

Section 66. Section **78A-5-510**, which is renumbered from Section 78-3a-410 is renumbered and amended to read:

**~~[78-3a-410].~~        78A-5-510. Specific considerations where a child has been placed in foster home.**

If a child is in the custody of the division and has been placed and resides in a foster home and the division institutes proceedings under this part regarding the child, with an ultimate goal of having the child's foster parent or parents adopt him, the court shall consider whether the child has become integrated into the foster family to the extent that his familial identity is with that family, and whether the foster family is able and willing permanently to treat the child as a member of the family. The court shall also consider, but is not limited to, the following:

(1) the love, affection, and other emotional ties existing between the child and the parents, and the child's ties with the foster family;

(2) the capacity and disposition of the child's parents from whom the child was removed as compared with that of the foster family to give the child love, affection, and

guidance and to continue the education of the child;

(3) the length of time the child has lived in a stable, satisfactory foster home and the desirability of his continuing to live in that environment;

(4) the permanence as a family unit of the foster family; and

(5) any other factor considered by the court to be relevant to a particular placement of a child.

Section 67. Section **78A-5-511**, which is renumbered from Section 78-3a-411 is renumbered and amended to read:

~~[78-3a-411].~~ **78A-5-511. Court disposition of child upon termination.**

(1) Upon entry of an order under this part the court may:

(a) place the child in the legal custody and guardianship of a licensed child placement agency or the division for adoption; or

(b) make any other disposition of the child authorized under Section ~~[78-3a-118]~~ **78A-5-117.**

(2) All adoptable children shall be placed for adoption.

Section 68. Section **78A-5-512**, which is renumbered from Section 78-3a-412 is renumbered and amended to read:

~~[78-3a-412].~~ **78A-5-512. Review following termination.**

(1) At the conclusion of the hearing in which the court orders termination of the parent-child relationship, the court shall order that a review hearing be held within 90 days following the date of termination if the child has not been permanently placed.

(2) At that review hearing, the agency or individual vested with custody of the child shall report to the court regarding the plan for permanent placement of the child. The guardian ad litem shall submit to the court a written report with recommendations, based on an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

Section 69. Section **78A-5-513**, which is renumbered from Section 78-3a-413 is renumbered and amended to read:

~~[78-3a-413].~~ **78A-5-513. Effect of decree.**

(1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings.

Section 70. Section **78A-5-514**, which is renumbered from Section 78-3a-414 is renumbered and amended to read:

~~[78-3a-414].~~            **78A-5-514. Voluntary relinquishment -- Irrevocable.**

(1) Voluntary relinquishment or consent for termination of parental rights shall be signed or confirmed under oath either:

(a) before a judge of any court that has jurisdiction over proceedings for termination of parental rights in this state or any other state, or a public officer appointed by that court for the purpose of taking consents or relinquishments; or

(b) except as provided in Subsection (2), any person authorized to take consents or relinquishments under Subsections 78-30-4.18(1) and (2).

(2) Only the juvenile court is authorized to take consents or relinquishments from a parent who has any child who is in the custody of a state agency or who has a child who is otherwise under the jurisdiction of the juvenile court.

(3) The court, appointed officer, or other authorized person shall certify to the best of that person's information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

(4) A voluntary relinquishment or consent for termination of parental rights is effective when it is signed and may not be revoked.

(5) The requirements and processes described in Sections ~~[78-3a-402]~~ 78A-5-502 through ~~[78-3a-410]~~ 78A-5-510 do not apply to a voluntary relinquishment or consent for termination of parental rights. The court need only find that the relinquishment or termination is in the child's best interest.

(6) There is a presumption that voluntary relinquishment or consent for termination of parental rights is not in the child's best interest where it appears to the court that the primary purpose is to avoid a financial support obligation. The presumption may be rebutted, however, if the court finds the relinquishment or consent to termination of parental rights will facilitate the establishment of stability and permanency for the child.

(7) Upon granting a voluntary relinquishment the court may make orders relating to the child's care and welfare that the court considers to be in the child's best interest.

Section 71. Section **78A-5-515**, which is renumbered from Section 78-3a-415 is renumbered and amended to read:

~~[78-3a-415].~~        **78A-5-515. Mental health therapist.**

(1) When a mental health practitioner is to be appointed in a parental rights action to evaluate the mental health of a parent or a child, or to provide mental health services to a parent or a child, the court:

(a) may appoint any mental health therapist, as defined in Section 58-60-102, which the court finds to be qualified;

(b) may not refuse to appoint a mental health therapist for the reason that the therapist's recommendations in another case have not followed the recommendations of the Division of Child and Family Services or the Office of the Guardian Ad Litem; and

(c) shall give strong consideration to the parent's or guardian's wishes regarding the selection of a mental health therapist.

(2) This section applies to all juvenile court proceedings involving:

(a) parents and children; or

(b) the Division of Child and Family Services.

Section 72. Section **78A-5-601**, which is renumbered from Section 78-3a-501 is renumbered and amended to read:

~~[78-3a-501].~~        **78A-5-601. Criminal proceedings involving minors --**

**Transfer to juvenile court -- Exception.**

(1) If, during the pendency of a criminal or quasi-criminal proceeding in another court, including a preliminary hearing, it is determined that the person charged is under 21 years of age and was less than 18 years of age at the time of committing the alleged offense, that court shall transfer the case to the juvenile court, together with all the papers, documents, and

3129 transcripts of any testimony except as provided in Sections [~~78-3a-602~~] 78A-5-702 and  
3130 [~~78-3a-603~~] 78A-5-703.

3131 (2) The court making the transfer shall order the person to be taken immediately to the  
3132 juvenile court or to a place of detention designated by the juvenile court, or shall release him to  
3133 the custody of his parent or guardian or other person legally responsible for him, to be brought  
3134 before the juvenile court at a time designated by it. The juvenile court shall then proceed as  
3135 provided in this chapter.

3136 Section 73. Section **78A-5-602**, which is renumbered from Section 78-3a-502 is  
3137 renumbered and amended to read:

3138 [~~78-3a-502~~]. **78A-5-602. Petition -- Preliminary inquiry -- Nonjudicial**  
3139 **adjustments -- Formal referral -- Citation -- Failure to appear.**

3140 (1) A proceeding in a minor's case is commenced by petition.

3141 (2) (a) A peace officer or any public official of the state, any county, city, or town  
3142 charged with the enforcement of the laws of the state or local jurisdiction shall file a formal  
3143 referral with the juvenile court within ten days of a minor's arrest. If the arrested minor is taken  
3144 to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours,  
3145 excluding weekends and holidays. There shall be no requirement to file a formal referral with  
3146 the juvenile court on an offense that would be a class B misdemeanor or less if committed by  
3147 an adult.

3148 (b) When the court is informed by a peace officer or other person that a minor is or  
3149 appears to be within the court's jurisdiction, the probation department shall make a preliminary  
3150 inquiry to determine whether the interests of the public or of the minor require that further  
3151 action be taken.

3152 (c) Based on the preliminary inquiry, the court may authorize the filing of or request  
3153 that the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7  
3154 file a petition. In its discretion, the court may, through its probation department, enter into a  
3155 written consent agreement with the minor and, if the minor is a child, the minor's parent,  
3156 guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and  
3157 establish prima facie jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for  
3158 a period of more than 90 days without leave of a judge of the court, who may extend the period  
3159 for an additional 90 days.

(d) The nonjudicial adjustment of a case may include conditions agreed upon as part of the nonjudicial closure:

(i) payment of a financial penalty of not more than \$250 to the Juvenile Court;

(ii) payment of victim restitution;

(iii) satisfactory completion of compensatory service;

(iv) referral to an appropriate provider for counseling or treatment;

(v) attendance at substance abuse programs or counseling programs;

(vi) compliance with specified restrictions on activities and associations; and

(vii) other reasonable actions that are in the interest of the child or minor and the community.

(e) Proceedings involving offenses under Section ~~[78-3a-506]~~ 78A-5-606 are governed by that section regarding suspension of driving privileges.

(f) A violation of Section 76-10-105 that is subject to the jurisdiction of the Juvenile Court shall include a minimum fine or penalty of \$60 and participation in a court-approved tobacco education program, which may include a participation fee.

(3) Except as provided in Section ~~[78-3a-602]~~ 78A-5-702, in the case of a minor 14 years of age or older, the county attorney, district attorney, or attorney general may commence an action by filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction and certify the minor to the district court.

(4) (a) In cases of violations of fish and game laws, boating laws, class B and class C misdemeanors, other infractions or misdemeanors as designated by general order of the Board of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court, a petition is not required and the issuance of a citation as provided in Section ~~[78-3a-503]~~ 78A-5-603 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not required unless requested by the court.

(b) Any failure to comply with the time deadline on a formal referral may not be the basis of dismissing the formal referral.

Section 74. Section **78A-5-603**, which is renumbered from Section 78-3a-503 is renumbered and amended to read:

~~[78-3a-503].~~        **78A-5-603. Citation procedure -- Citation -- Offenses -- Time limits -- Failure to appear.**

3191 (1) As used in this section, "citation" means an abbreviated referral and is sufficient to  
3192 invoke the jurisdiction of the court in lieu of a petition.

3193 (2) A citation shall be submitted to the court within five days of its issuance.

3194 (3) Each copy of the citation shall contain:

3195 (a) the name and address of the juvenile court before which the minor is to appear;

3196 (b) the name of the minor cited;

3197 (c) the statute or local ordinance that is alleged to have been violated;

3198 (d) a brief description of the offense charged;

3199 (e) the date, time, and location at which the offense is alleged to have occurred;

3200 (f) the date the citation was issued;

3201 (g) the name and badge or identification number of the peace officer or public official  
3202 who issued the citation;

3203 (h) the name of the arresting person if an arrest was made by a private party and the  
3204 citation was issued in lieu of taking the arrested minor into custody as provided in Section  
3205 ~~[78-3a-113]~~ 78A-5-112;

3206 (i) the date and time when the minor is to appear, or a statement that the minor and  
3207 parent or legal guardian are to appear when notified by the juvenile court; and

3208 (j) the signature of the minor and the parent or legal guardian, if present, agreeing to  
3209 appear at the juvenile court as designated on the citation.

3210 (4) Each copy of the citation shall contain space for the following information to be  
3211 entered if known:

3212 (a) the minor's address;

3213 (b) the minor's date of birth;

3214 (c) the name and address of the child's custodial parent or legal guardian, if different  
3215 from the child; and

3216 (d) if there is a victim, the victim's name, address, and an estimate of loss, except that  
3217 this information shall be removed from the documents the minor receives.

3218 (5) A citation received by the court beyond the time designated in Subsection (2) shall  
3219 include a written explanation for the delay.

3220 (6) The following offenses may be sent to the juvenile court as a citation:

3221 (a) violations of fish and game laws;



3222 (b) violations of boating laws;  
3223 (c) violations of curfew laws;  
3224 (d) any class B misdemeanor or less traffic violations where the person is under the age  
3225 of 16;  
3226 (e) any class B or class C misdemeanor or infraction;  
3227 (f) any other infraction or misdemeanor as designated by general order of the Board of  
3228 Juvenile Court Judges; and  
3229 (g) violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court.  
3230 (7) A preliminary inquiry is not required unless requested by the court.  
3231 (8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or  
3232 habitually truant child.  
3233 (9) In the case of Section 76-10-105 violations committed on school property when a  
3234 citation is issued under this section, the peace officer, public official, or compliance officer  
3235 shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and  
3236 file a duplicate with the juvenile court specified in the citation within five days.  
3237 (10) (a) A minor receiving a citation described in this section shall appear at the  
3238 juvenile court designated in the citation on the time and date specified in the citation or when  
3239 notified by the juvenile court.  
3240 (b) A citation may not require a minor to appear sooner than five days following its  
3241 issuance.  
3242 (11) A minor who receives a citation and willfully fails to appear before the juvenile  
3243 court pursuant to a citation is subject to arrest and may be found in contempt of court. The  
3244 court may proceed against the minor as provided in Section ~~[78-3a-901]~~ 78A-5-1101 regardless  
3245 of the disposition of the offense upon which the minor was originally cited.  
3246 (12) When a citation is issued under this section, bail may be posted and forfeited  
3247 under Subsection ~~[78-3a-114]~~ 78A-5-113(12) with the consent of:  
3248 (a) the court; and  
3249 (b) if the minor is a child, the parent or legal guardian of the child cited.  
3250 Section 75. Section **78A-5-604**, which is renumbered from Section 78-3a-504 is  
3251 renumbered and amended to read:  
3252 ~~[78-3a-504].~~ **78A-5-604. Minor held in detention -- Credit for good**

3253 **behavior.**

3254 (1) The judge may order whether a minor held in detention under Subsection  
3255 ~~[78-3a-118]~~ 78A-5-117(2)(f) or ~~[78-3a-901]~~ 78A-5-1101(3) is eligible to receive credit for  
3256 good behavior against the period of detention. The rate of credit is one day for every three days  
3257 served. The Division of Juvenile Justice Services shall, in accordance with Title 63, Chapter  
3258 46a, Utah Administrative Rulemaking Act, establish rules describing good behavior for which  
3259 credit may be earned.

3260 (2) Any disposition including detention under Subsection ~~[78-3a-118]~~  
3261 78A-3a-117(2)(f) or ~~[78-3a-901]~~ 78A-5-1101(3) shall be concurrent with any other order of  
3262 detention.

3263 Section 76. Section **78A-5-605**, which is renumbered from Section 78-3a-505 is  
3264 renumbered and amended to read:

3265 ~~[78-3a-505].~~ **78A-5-605. Dispositional report required in minor's cases --**  
3266 **Exceptions.**

3267 (1) The probation department or other agency designated by the court shall make a  
3268 dispositional report in writing in all minor's cases in which a petition has been filed, except that  
3269 the court may dispense with the study and report in cases involving violations of traffic laws or  
3270 ordinances, violations of fish and game laws, boating laws, and other minor cases.

3271 (2) When preparing a dispositional report and recommendation in a delinquency action,  
3272 the probation department or other agency designated by the court shall consider the juvenile  
3273 sentencing guidelines developed in accordance with Section 63-25a-304 and any aggravating or  
3274 mitigating circumstances.

3275 (3) Where the allegations of a petition filed under Subsection ~~[78-3a-104]~~  
3276 78A-5-103(1) are denied, the investigation may not be made until the court has made an  
3277 adjudication.

3278 Section 77. Section **78A-5-606**, which is renumbered from Section 78-3a-506 is  
3279 renumbered and amended to read:

3280 ~~[78-3a-506].~~ **78A-5-606. Suspension of license for certain offenses.**

3281 (1) This section applies to minors who are at least 13 years of age when found by the  
3282 court to be within its jurisdiction by the commission of any offense under:

3283 (a) Section 58-37-8;

- 3284 (b) Section 32A-12-209;  
3285 (c) Section 32A-12-209.5;  
3286 (d) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;  
3287 (e) Title 58, Chapter 37b, Imitation Controlled Substances; or  
3288 (f) Subsection 76-9-701(1).

3289 (2) If the court hearing the case determines that the minor committed an offense under  
3290 Section 58-37-8 or Title 58, Chapter 37a or 37b, the court shall prepare and send to the Driver  
3291 License Division of the Department of Public Safety an order to suspend that minor's driving  
3292 privileges.

3293 (3) If the court hearing the case determines that the minor violated Section  
3294 32A-12-209, Section 32A-12-209.5, or Subsection 76-9-701(1), and the violation is the  
3295 minor's:

- 3296 (a) first violation, the court may suspend the minor's driving privileges; or  
3297 (b) second or subsequent violation, the court shall suspend the minor's driving  
3298 privileges.

3299 (4) A minor's license shall be suspended under Section 53-3-219 when a court issues  
3300 an order suspending the minor's driving privileges for a violation of:

- 3301 (a) Section 32A-12-209;  
3302 (b) Section 32A-12-209.5;  
3303 (c) Section 58-37-8;  
3304 (d) Title 58, Chapter 37a or 37b; or  
3305 (e) Subsection 76-9-701(1).

3306 (5) When the Department of Public Safety receives the arrest or conviction record of a  
3307 person for a driving offense committed while his license is suspended under this section, the  
3308 department shall extend the suspension for a like period of time.

3309 Section 78. Section **78A-5-701**, which is renumbered from Section 78-3a-601 is  
3310 renumbered and amended to read:

3311 **Part 7. Transfer of Jurisdiction**

3312 **~~[78-3a-601].~~ 78A-5-701. Jurisdiction of district court.**

3313 (1) The district court shall have exclusive original jurisdiction over all persons 16 years  
3314 of age or older charged by information or indictment with:

3315 (a) an offense which would be murder or aggravated murder if committed by an adult;  
 3316 or

3317 (b) an offense which would be a felony if committed by an adult if the minor has been  
 3318 previously committed to a secure facility as defined in Section 62A-7-101. This Subsection  
 3319 (1)(b) shall not apply if the offense is committed in a secure facility.

3320 (2) When the district court has exclusive original jurisdiction over a minor under this  
 3321 section, it also has exclusive original jurisdiction over the minor regarding all offenses joined  
 3322 with the qualifying offense, and any other offenses, including misdemeanors, arising from the  
 3323 same criminal episode. The district court is not divested of jurisdiction by virtue of the fact  
 3324 that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

3325 (3) (a) Any felony, misdemeanor, or infraction committed after the offense over which  
 3326 the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the  
 3327 defendant as an adult in the district court or justice court having jurisdiction.

3328 (b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not  
 3329 guilty, or a dismissal of the charge in the district court, the juvenile court under Section  
 3330 ~~[78-3a-104]~~ 78A-5-103 and the Division of Juvenile Justice Services regain jurisdiction and  
 3331 any authority previously exercised over the minor.

3332 Section 79. Section **78A-5-702**, which is renumbered from Section 78-3a-602 is  
 3333 renumbered and amended to read:

3334 ~~[78-3a-602].~~ **78A-5-702. Serious youth offender -- Procedure.**

3335 (1) Any action filed by a county attorney, district attorney, or attorney general charging  
 3336 a minor 16 years of age or older with a felony shall be by criminal information and filed in the  
 3337 juvenile court if the information charges any of the following offenses:

3338 (a) any felony violation of:

3339 (i) Section 76-6-103, aggravated arson;

3340 (ii) Subsection 76-5-103(1)(a), aggravated assault, involving intentionally causing  
 3341 serious bodily injury to another;

3342 (iii) Section 76-5-302, aggravated kidnaping;

3343 (iv) Section 76-6-203, aggravated burglary;

3344 (v) Section 76-6-302, aggravated robbery;

3345 (vi) Section 76-5-405, aggravated sexual assault;

3346 (vii) Section 76-10-508, discharge of a firearm from a vehicle;

3347 (viii) Section 76-5-202, attempted aggravated murder; or

3348 (ix) Section 76-5-203, attempted murder; or

3349 (b) an offense other than those listed in Subsection (1)(a) involving the use of a  
3350 dangerous weapon which would be a felony if committed by an adult, and the minor has been  
3351 previously adjudicated or convicted of an offense involving the use of a dangerous weapon  
3352 which also would have been a felony if committed by an adult.

3353 (2) All proceedings before the juvenile court related to charges filed under Subsection  
3354 (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

3355 (3) (a) If the information alleges the violation of a felony listed in Subsection (1), the  
3356 state shall have the burden of going forward with its case and the burden of proof to establish  
3357 probable cause to believe that one of the crimes listed in Subsection (1) has been committed  
3358 and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have  
3359 the additional burden of proving by a preponderance of the evidence that the defendant has  
3360 previously been adjudicated or convicted of an offense involving the use of a dangerous  
3361 weapon.

3362 (b) If the juvenile court judge finds the state has met its burden under this Subsection  
3363 (3), the court shall order that the defendant be bound over and held to answer in the district  
3364 court in the same manner as an adult unless the juvenile court judge finds that all of the  
3365 following conditions exist:

3366 (i) the minor has not been previously adjudicated delinquent for an offense involving  
3367 the use of a dangerous weapon which would be a felony if committed by an adult;

3368 (ii) that if the offense was committed with one or more other persons, the minor  
3369 appears to have a lesser degree of culpability than the codefendants; and

3370 (iii) that the minor's role in the offense was not committed in a violent, aggressive, or  
3371 premeditated manner.

3372 (c) Once the state has met its burden under this Subsection (3) as to a showing of  
3373 probable cause, the defendant shall have the burden of going forward and presenting evidence  
3374 as to the existence of the above conditions.

3375 (d) If the juvenile court judge finds by clear and convincing evidence that all the above  
3376 conditions are satisfied, the court shall so state in its findings and order the minor held for trial

as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(6) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(7) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(8) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

(9) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(10) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(11) The juvenile court under Section ~~[78-3a-104]~~ 78A-5-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Section 80. Section **78A-5-703**, which is renumbered from Section 78-3a-603 is renumbered and amended to read:

~~[78-3a-603].~~        **78A-5-703. Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.**

(1) If a criminal information filed in accordance with Subsection ~~[78-3a-502]~~ 78A-5-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor in concert with two or more persons under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of his home,

3439 environment, emotional attitude, and pattern of living;  
3440 (f) the record and previous history of the minor;  
3441 (g) the likelihood of rehabilitation of the minor by use of facilities available to the  
3442 juvenile court;  
3443 (h) the desirability of trial and disposition of the entire offense in one court when the  
3444 minor's associates in the alleged offense are adults who will be charged with a crime in the  
3445 district court;  
3446 (i) whether the minor used a firearm in the commission of an offense; and  
3447 (j) whether the minor possessed a dangerous weapon on or about school premises as  
3448 provided in Section 76-10-505.5.

3449 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is  
3450 discretionary with the court.

3451 (5) (a) Written reports and other materials relating to the minor's mental, physical,  
3452 educational, and social history may be considered by the court.

3453 (b) If requested by the minor, the minor's parent, guardian, or other interested party, the  
3454 court shall require the person or agency preparing the report and other material to appear and  
3455 be subject to both direct and cross-examination.

3456 (6) At the conclusion of the state's case, the minor may testify under oath, call  
3457 witnesses, cross-examine adverse witnesses, and present evidence on the factors required by  
3458 Subsection (3).

3459 (7) If the court finds the state has met its burden under Subsection (2), the court may  
3460 enter an order:

3461 (a) certifying that finding; and  
3462 (b) directing that the minor be held for criminal proceedings in the district court.

3463 (8) If an indictment is returned by a grand jury, the preliminary examination held by the  
3464 juvenile court need not include a finding of probable cause, but the juvenile court shall proceed  
3465 in accordance with this section regarding the additional consideration referred to in Subsection  
3466 (2)(b).

3467 (9) The provisions of Section ~~[78-3a-116]~~ 78A-5-114, Section ~~[78-3a-913]~~ 78A-5-111,  
3468 and other provisions relating to proceedings in juvenile cases are applicable to the hearing held  
3469 under this section to the extent they are pertinent.



(10) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the minor with an offense described in Section ~~[78-3a-602]~~ 78A-5-702, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsection (14).

(13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(14) The juvenile court under Section ~~[78-3a-104]~~ 78A-5-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Section 81. Section **78A-5-704**, which is renumbered from Section 78-3a-604 is renumbered and amended to read:

~~[78-3a-604].~~        **78A-5-704. Appeals from serious youth offender and certification proceedings.**

(1) A minor may, as a matter of right, appeal from:

(a) an order of the juvenile court binding the minor over to the district court as a serious youth offender pursuant to Section ~~[78-3a-602]~~ 78A-5-702; or

(b) an order of the juvenile court, after certification proceedings pursuant to Section 78-3a-603, directing that the minor be held for criminal proceedings in the district court.

(2) The prosecution may, as a matter of right, appeal from:

(a) an order of the juvenile court that a minor charged as a serious youth offender

3501 pursuant to Section ~~[78-3a-602]~~ 78A-5-702 be held for trial in the juvenile court; or

3502 (b) a refusal by the juvenile court, after certification proceedings pursuant to Section  
3503 ~~[78-3a-603]~~ 78A-5-703, to order that a minor be held for criminal proceedings in the district  
3504 court.

3505 Section 82. Section **78A-5-801**, which is renumbered from Section 78-3a-1001 is  
3506 renumbered and amended to read:

3507 **Part 8. Emancipation**

3508 ~~[78-3a-1001].~~ **78A-5-801. Purpose.**

3509 (1) The purpose of this part is to provide a means by which a minor who has  
3510 demonstrated the ability and capacity to manage his or her own affairs and to live independent  
3511 of his or her parents or guardian, may obtain the legal status of an emancipated person with the  
3512 power to enter into valid legal contracts.

3513 (2) This part is not intended to interfere with the integrity of the family or to minimize  
3514 the rights of parents or children. As provided in Section 62A-4a-201, a parent possesses a  
3515 fundamental liberty interest in the care, custody, and management of their children.

3516 Section 83. Section **78A-5-802**, which is renumbered from Section 78-3a-1002 is  
3517 renumbered and amended to read:

3518 ~~[78-3a-1002].~~ **78A-5-802. Definitions.**

3519 As used in this part:

3520 (1) "Guardian" has the same meaning as in Section 75-1-201.

3521 (2) "Minor" means a person 16 years of age or older.

3522 (3) "Parent" means a natural parent as defined in Section ~~[78-3a-103]~~ 78A-5-105.

3523 Section 84. Section **78A-5-803**, which is renumbered from Section 78-3a-1003 is  
3524 renumbered and amended to read:

3525 ~~[78-3a-1003].~~ **78A-5-803. Petition for emancipation.**

3526 (1) A minor may petition the juvenile court on his or her own behalf in the district in  
3527 which he or she resides for a declaration of emancipation. The petition shall be on a form  
3528 provided by the clerk of the court, and state that the minor is:

3529 (a) 16 years of age or older;

3530 (b) capable of living independently of his or her parents or guardian; and

3531 (c) capable of managing his or her own financial affairs.

(2) Notice of the petition shall be served on the minor's parents, guardian, any other person or agency with custody of the minor, and the Child and Family Support Division of the Office of the Attorney General, unless the court determines that service is impractical.

Section 85. Section **78A-5-804**, which is renumbered from Section 78-3a-1004 is renumbered and amended to read:

**~~[78-3a-1004].~~        78A-5-804. Court procedure.**

(1) Upon the filing of a petition in accordance with Section ~~[78-3a-1003]~~ 78A-5-803, the court shall schedule a pretrial hearing on the matter within 30 days.

(2) The court shall appoint a guardian ad litem in accordance with Section ~~[78-3a-912]~~ 78A-5-902 to represent the minor.

(3) At the hearing, the court shall consider the best interests of the minor according to the following:

(a) whether the minor is capable of assuming adult responsibilities;

(b) whether the minor is capable of living independently of his or her parents, guardian, or custodian;

(c) opinions and recommendations from the guardian ad litem, parents, guardian, or custodian, and any other evidence; and

(d) whether emancipation will create a risk of harm to the minor.

(4) If the court determines by clear and convincing evidence that emancipation is in the best interests of the minor, it shall issue a declaration of emancipation.

Section 86. Section **78A-5-805**, which is renumbered from Section 78-3a-1005 is renumbered and amended to read:

**~~[78-3a-1005].~~        78A-5-805. Emancipation.**

(1) An emancipated minor may:

(a) enter into contracts;

(b) buy and sell property;

(c) sue or be sued;

(d) retain his or her own earnings;

(e) borrow money for any purpose, including for education; and

(f) obtain healthcare without parental consent.

(2) An emancipated minor may not be considered an adult:

(a) under the criminal laws of the state unless the requirements of Part [6] 7, Transfer of Jurisdiction, have been met;

(b) under the criminal laws of the state when he or she is a victim and the age of the victim is an element of the offense; and

(c) for specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, possession of tobacco or firearms, and other health and safety regulations relevant to the minor because of the minor's age.

(3) An order of emancipation prospectively terminates parental responsibilities that accrue based on the minor's status as a minor under the custody and control of a parent, guardian, or custodian, including parental tort liability for the acts of the minor.

Section 87. Section **78A-5-901**, which is renumbered from Section 78-3a-911 is renumbered and amended to read:

**Part 9. Guardian Ad Litem**

~~[78-3a-911].~~      **78A-5-901. Office of Guardian Ad Litem Director -- Appointment of director -- Duties of director -- Contracts in second, third, and fourth districts.**

(1) There is hereby created the Office of Guardian Ad Litem Director under the direct supervision of the Judicial Council in accordance with Subsection ~~[78-3-21]~~ 78A-1-201(13).

(2) (a) The Judicial Council shall appoint one person to serve full time as the guardian ad litem director for the state. The guardian ad litem director shall serve at the pleasure of the Judicial Council.

(b) The director shall be an attorney licensed to practice law in this state and selected on the basis of:

(i) professional ability;

(ii) experience in abuse, neglect, and dependency proceedings;

(iii) familiarity with the role, purpose, and function of guardians ad litem in both juvenile and district courts; and

(iv) ability to develop training curricula and reliable methods for data collection and evaluation.

(c) The director shall be trained in the United States Department of Justice National Court Appointed Special Advocate program prior to or immediately after the director's

3594 appointment.

3595 (3) The guardian ad litem director shall:

3596 (a) establish policy and procedure for the management of a statewide guardian ad litem  
3597 program;

3598 (b) manage the guardian ad litem program to assure that minors receive qualified  
3599 guardian ad litem services in abuse, neglect, and dependency proceedings in accordance with  
3600 state and federal law and policy;

3601 (c) develop standards for contracts of employment and contracts with independent  
3602 contractors, and employ or contract with attorneys licensed to practice law in this state, to act  
3603 as attorney guardians ad litem in accordance with Section ~~[78-3a-912]~~ 78A-5-902;

3604 (d) develop and provide training programs for attorney guardians ad litem and  
3605 volunteers in accordance with the United States Department of Justice National Court  
3606 Appointed Special Advocates Association standards;

3607 (e) update and develop the guardian ad litem manual, combining elements of the  
3608 National Court Appointed Special Advocates Association manual with specific information  
3609 about the law and policy of this state;

3610 (f) develop and provide a library of materials for the continuing education of attorney  
3611 guardians ad litem and volunteers;

3612 (g) educate court personnel regarding the role and function of guardians ad litem;

3613 (h) develop needs assessment strategies, perform needs assessment surveys, and ensure  
3614 that guardian ad litem training programs correspond with actual and perceived needs for  
3615 training;

3616 (i) design and implement evaluation tools based on specific objectives targeted in the  
3617 needs assessments described in Subsection (3)(h);

3618 (j) prepare and submit an annual report to the Judicial Council and the Child Welfare  
3619 Legislative Oversight Panel regarding the development, policy, and management of the  
3620 statewide guardian ad litem program, and the training and evaluation of attorney guardians ad  
3621 litem and volunteers;

3622 (k) hire, train, and supervise investigators; and

3623 (l) administer the program of private guardians ad litem established by Section  
3624 78-7-45.

(4) A contract of employment or independent contract described under Subsection (3)(c) shall provide that attorney guardians ad litem in the second, third, and fourth judicial districts devote their full time and attention to the role of attorney guardian ad litem, having no clients other than the minors whose interest they represent within the guardian ad litem program.

Section 88. Section **78A-5-902**, which is renumbered from Section 78-3a-912 is renumbered and amended to read:

**~~[78-3a-912].~~            78A-5-902. Appointment of attorney guardian ad litem -- Right of refusal -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.**

(1) (a) The court:

(i) may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court; and

(ii) shall consider the best interest of a minor, consistent with the provisions of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.

(b) In all cases where an attorney guardian ad litem is appointed, the court shall make a finding that establishes the necessity of the appointment.

(2) An attorney guardian ad litem shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that:

(a) the child is removed from the child's home by the division; or

(b) the petition is filed.

(3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad litem, shall:

(a) represent the best interest of the minor in all proceedings;

(b) prior to representing any minor before the court, be trained in:

(i) applicable statutory, regulatory, and case law; and

(ii) accordance with the United States Department of Justice National Court Appointed Special Advocate Association guidelines;

(c) conduct or supervise an independent investigation in order to obtain first-hand, a clear understanding of the situation and needs of the minor;

3656 (d) (i) personally meet with the minor;  
3657 (ii) personally interview the minor if the minor is old enough to communicate;  
3658 (iii) determine the minor's goals and concerns regarding placement; and  
3659 (iv) personally assess or supervise an assessment of the appropriateness and safety of  
3660 the minor's environment in each placement;  
3661 (e) file written motions, responses, or objections at all stages of a proceeding when  
3662 necessary to protect the best interest of a minor;  
3663 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all  
3664 administrative and foster care citizen review board hearings pertaining to the minor's case;  
3665 (g) participate in all appeals unless excused by order of the court;  
3666 (h) be familiar with local experts who can provide consultation and testimony  
3667 regarding the reasonableness and appropriateness of efforts made by the Division of Child and  
3668 Family Services to:  
3669 (i) maintain a minor in the minor's home; or  
3670 (ii) reunify a child with the child's parent;  
3671 (i) to the extent possible, and unless it would be detrimental to the minor, personally or  
3672 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of:  
3673 (i) the status of the minor's case;  
3674 (ii) all court and administrative proceedings;  
3675 (iii) discussions with, and proposals made by, other parties;  
3676 (iv) court action; and  
3677 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be  
3678 provided to the minor;  
3679 (j) review proposed orders for, and as requested by the court;  
3680 (k) prepare proposed orders with clear and specific directions regarding services,  
3681 treatment, evaluation, assessment, and protection of the minor and the minor's family; and  
3682 (l) personally or through a trained volunteer, paralegal, or other trained staff, monitor  
3683 implementation of a minor's child and family plan and any dispositional orders to:  
3684 (i) determine whether services ordered by the court:  
3685 (A) are actually provided; and  
3686 (B) are provided in a timely manner; and

(ii) attempt to assess whether services ordered by the court are accomplishing the intended goal of the services.

(4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court.

(b) The attorney guardian ad litem described in Subsection (4)(a) may not delegate the attorney's responsibilities described in Subsection (3).

(c) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(d) The court may use volunteers trained in accordance with the requirements of Subsection (4)(c) to assist in investigation and preparation of information regarding the cases of individual minors within the jurisdiction.

(e) When possible and appropriate, the court may use a volunteer who is a peer of the minor appearing before the court, in order to provide assistance to that minor, under the supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or other trained staff.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from that duty by the court.

(6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

(i) all costs resulting from the appointment of an attorney guardian ad litem; and

(ii) the costs of volunteer, paralegal, and other staff appointment and training.

(b) The court shall use funds appropriated by the Legislature for the guardian ad litem program to cover the costs described in Subsection (6)(a).

(c) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses against the child's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate.

(ii) The court may not assess those fees or costs against:

(A) a legal guardian, when that guardian is the state; or



3718 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

3719 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the  
3720 court shall:

3721 (i) require that person to submit an affidavit of impecuniosity as provided in Section  
3722 78-7-36; and

3723 (ii) follow the procedures and make the determinations as provided in Section 78-7-37.

3724 (7) An attorney guardian ad litem appointed under this section, when serving in the  
3725 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee  
3726 of the state for purposes of indemnification under Title 63, Chapter 30d, Governmental  
3727 Immunity Act of Utah.

3728 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

3729 (b) If the minor's wishes differ from the attorney's determination of the minor's best  
3730 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in  
3731 addition to presenting the attorney's determination of the minor's best interest.

3732 (c) A difference between the minor's wishes and the attorney's determination of best  
3733 interest may not be considered a conflict of interest for the attorney.

3734 (d) The court may appoint one attorney guardian ad litem to represent the best interests  
3735 of more than one child of a marriage.

3736 (9) An attorney guardian ad litem shall be provided access to all Division of Child and  
3737 Family Services records regarding the minor at issue and the minor's family.

3738 (10) An attorney guardian ad litem shall maintain current and accurate records  
3739 regarding:

3740 (a) the number of times the attorney has had contact with each minor; and

3741 (b) the actions the attorney has taken in representation of the minor's best interest.

3742 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian  
3743 ad litem are confidential and may not be released or made public upon subpoena, search  
3744 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2,  
3745 Government Records Access and Management Act.

3746 (b) Consistent with Subsection (11)(d), all records of an attorney guardian ad litem:

3747 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative  
3748 Subpoena Powers; and

3749 (ii) shall be released to the Legislature.

3750 (c) (i) Except as provided in Subsection (11)(c)(ii), records released in accordance with

3751 Subsection (11)(b) shall be maintained as confidential by the Legislature.

3752 (ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor

3753 General may include summary data and nonidentifying information in its audits and reports to

3754 the Legislature.

3755 (d) (i) Subsection (11)(b) constitutes an exception to Rules of Professional Conduct,

3756 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

3757 (A) the unique role of an attorney guardian ad litem described in Subsection (8); and

3758 (B) the state's role and responsibility:

3759 (I) to provide a guardian ad litem program; and

3760 (II) as parens patriae, to protect minors.

3761 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney

3762 guardian ad litem by the Legislature, through legislative subpoena.

3763 (e) The Office of the Guardian Ad Litem shall present an annual report to the Child

3764 Welfare Legislative Oversight Panel detailing:

3765 (i) the development, policy, and management of the statewide guardian ad litem

3766 program;

3767 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and

3768 (iii) the number of minors served by the Office of the Guardian Ad Litem.

3769 Section 89. Section **78A-5-1001**, which is renumbered from Section 78-3a-801 is

3770 renumbered and amended to read:

3771 ~~[78-3a-801]~~. **78A-5-1001. Jurisdiction over adults for offenses against**

3772 **minors -- Proof of delinquency not required for conviction.**

3773 (1) The court shall have jurisdiction, concurrent with the district court or justice court

3774 otherwise having subject matter jurisdiction, to try adults for the following offenses committed

3775 against minors:

3776 (a) unlawful sale or supply of alcohol beverage or product to minors in violation of

3777 Section 32A-12-203;

3778 (b) failure to report child abuse or neglect, as required by Title 62A, Chapter 4a, Part 4,

3779 Child Abuse or Neglect Reporting Requirements;

3780 (c) harboring a minor in violation of Section 62A-4a-501;  
3781 (d) misdemeanor custodial interference in violation of Section 76-5-303;  
3782 (e) contributing to the delinquency of a minor in violation of Section 76-10-2301; and  
3783 (f) failure to comply with compulsory education requirements in violation of Section  
3784 53A-11-101.5.

3785 (2) It is not necessary for the minor to be found to be delinquent or to have committed  
3786 a delinquent act for the court to exercise jurisdiction under Subsection (1).

3787 Section 90. Section **78A-5-1002**, which is renumbered from Section 78-3a-802 is  
3788 renumbered and amended to read:

3789 ~~[78-3a-802].~~ **78A-5-1002. Practice and procedure -- Jury trial.**

3790 (1) The county attorney or district attorney, as provided under Sections 17-18-1 and  
3791 17-18-1.7, shall prosecute any case brought under this part.

3792 (2) Proceedings under this part shall be governed by the statutes and rules governing  
3793 criminal proceedings in the district court, except the court may, and on stipulation of the  
3794 parties, shall, transfer the case to the district court.

3795 Section 91. Section **78A-5-1004**, which is renumbered from Section 78-3a-804 is  
3796 renumbered and amended to read:

3797 ~~[78-3a-804].~~ **78A-5-1004. Costs and expenses of trial.**

3798 The fees and expenses, the cost of publication of summons, and the expense of a trial of  
3799 an adult, when approved by the court, are paid by the state, except prosecution costs and public  
3800 defender costs are paid by the county where the hearing or trial is held.

3801 Section 92. Section **78A-5-1101**, which is renumbered from Section 78-3a-901 is  
3802 renumbered and amended to read:

3803 **Part 11. Miscellaneous Provisions**

3804 ~~[78-3a-901].~~ **78A-5-1101. Violation of order of court -- Contempt --**  
3805 **Penalty.**

3806 (1) Any person who willfully violates or refuses to obey any order of the court may be  
3807 proceeded against for contempt of court.

3808 (2) Any person 18 years of age or older found in contempt of court may be punished in  
3809 accordance with Section 78-32-10.

3810 (3) (a) Any person younger than 18 years of age found in contempt of court may be

3811 punished by any disposition permitted under Section ~~[78-3a-118]~~ 78A-5-117, except for  
3812 commitment to a secure facility.

3813 (b) The court may stay or suspend all or part of the punishment upon compliance with  
3814 conditions imposed by the court.

3815 (4) The court may enforce orders of fines, fees, or restitution through garnishments,  
3816 wage withholdings, supplementary proceedings, or executions.

3817 Section 93. Section **78A-5-1102**, which is renumbered from Section 78-3a-902 is  
3818 renumbered and amended to read:

3819 ~~[78-3a-902]~~. **78A-5-1102. Amendment of petition -- When authorized --**  
3820 **Continuance of proceedings.**

3821 When it appears during the course of any proceeding in a minor's case that the evidence  
3822 presented points to material facts not alleged in the petition, the court may consider the  
3823 additional or different matters raised by the evidence, if the parties consent. The court on  
3824 motion of any interested party or on its own motion shall direct that the petition be amended to  
3825 conform to the evidence. If the amendment results in a substantial departure from the facts  
3826 originally alleged, the court shall grant such continuance as justice may require.

3827 Section 94. Section **78A-5-1103**, which is renumbered from Section 78-3a-903 is  
3828 renumbered and amended to read:

3829 ~~[78-3a-903]~~. **78A-5-1103. Modification or termination of custody order or**  
3830 **decree -- Grounds -- Procedure.**

3831 (1) A parent, guardian, or next friend of a child whose legal custody has been  
3832 transferred by the court to an individual, agency, or institution, except a secure youth  
3833 corrections facility, may petition the court for restoration of custody or other modification or  
3834 revocation of the court's order, on the ground that a change of circumstances has occurred  
3835 which requires such modification or revocation in the best interest of the child or the public.

3836 (2) The court shall make a preliminary investigation. If the court finds that the alleged  
3837 change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If  
3838 the court finds that a further examination of the facts is needed, or if the court on its own  
3839 motion determines that the decree should be reviewed, it shall conduct a hearing. Notice shall  
3840 be given to all persons concerned. At the hearing, the court may enter an order continuing,  
3841 modifying, or terminating the decree.

(3) A petition by a parent may not be filed under this section after the parent's parental rights have been terminated in accordance with Part [4] 5, Termination of Parental Rights Act.

(4) An individual, agency, or institution vested with legal custody of a child may petition the court for a modification of the custody order on the ground that the change is necessary for the welfare of the child or in the public interest. The court shall proceed upon the petition in accordance with Subsections (1) and (2).

Section 95. Section **78A-5-1104**, which is renumbered from Section 78-3a-904 is renumbered and amended to read:

~~[78-3a-904].~~        **78A-5-1104. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- Expungement.**

(1) Photographs may be taken of a minor 14 years of age or older who:

(a) is taken into custody for the alleged commission of an offense under Sections ~~[78-3a-104, 78-3a-601, and 78-3a-602]~~ 78A-5-103, 78A-5-701, and 78A-5-702 that would also be an offense if the minor were 18 years of age or older; or

(b) has been determined to be a serious habitual offender for tracking under Section 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of Juvenile Justice Services.

(2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

(i) is taken into custody for the alleged commission of an offense that would be a felony if the minor were 18 years of age or older;

(ii) has been determined to be a serious habitual offender for tracking under Section 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of Juvenile Justice Services; or

(iii) is required to provide a DNA specimen under Section 53-10-403.

(b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be stored by electronic medium.

(3) HIV testing may be conducted on a minor who is taken into custody after having been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of the victim or the parent or guardian of a child victim.

(4) HIV tests, photographs, and fingerprints may not be taken of a child younger than

3873 14 years of age without the consent of the court.

3874 (5) (a) Photographs may be distributed or disbursed to individuals or agencies other  
3875 than state or local law enforcement agencies only when a minor 14 years of age or older is  
3876 charged with an offense which would be a felony if committed by an adult.

3877 (b) Fingerprints may be distributed or disbursed to individuals or agencies other than  
3878 state or local law enforcement agencies.

3879 (6) When a minor's juvenile record is expunged, all photographs and other records as  
3880 ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records  
3881 may not be destroyed.

3882 Section 96. Section **78A-5-1105**, which is renumbered from Section 78-3a-905 is  
3883 renumbered and amended to read:

3884 ~~[78-3a-905].~~ **78A-5-1105. Expungement of juvenile court record --**  
3885 **Petition -- Procedure.**

3886 (1) (a) A person who has been adjudicated under this chapter may petition the court for  
3887 the expungement of the person's record in the juvenile court if:

3888 (i) the person has reached 18 years of age; and

3889 (ii) one year has elapsed from the date of termination of the continuing jurisdiction of  
3890 the juvenile court or, if the person was committed to a secure youth corrections facility, one  
3891 year from the date of the person's unconditional release from the custody of the Division of  
3892 Juvenile Justice Services.

3893 (b) The court may waive the requirements in Subsection (1)(a), if the court finds, and  
3894 states on the record, the reason why the waiver is appropriate.

3895 (c) The petitioner shall include with the petition the original criminal history report  
3896 obtained from the Bureau of Criminal Identification in accordance with the provisions of  
3897 Subsection 53-10-108(8).

3898 (d) The petitioner shall send a copy of the petition to the county attorney or, if within a  
3899 prosecution district, the district attorney.

3900 (e) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall  
3901 notify the county attorney or district attorney, and the agency with custody of the records of the  
3902 pendency of the petition and of the date of the hearing. Notice shall be given at least 30 days  
3903 prior to the hearing.

(ii) The court shall provide a victim with the opportunity to request notice of a petition for expungement. A victim shall receive notice of a petition for expungement at least 30 days prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a child or a person who is incapacitated or deceased, the victim's next of kin or authorized representative, submits a written and signed request for notice to the court in the judicial district in which the crime occurred or judgment was entered. The notice shall include a copy of the petition and statutes and rules applicable to the petition.

(2) (a) At the hearing, the county attorney or district attorney, a victim, and any other person who may have relevant information about the petitioner may testify.

(b) In deciding whether to grant a petition for expungement, the court shall consider whether the rehabilitation of the petitioner has been attained to the satisfaction of the court, taking into consideration the petitioner's response to programs and treatment, the petitioner's behavior subsequent to adjudication, and the nature and seriousness of the conduct.

(c) The court may order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's adjudicated juvenile court cases if the court finds that:

(i) the petitioner has not, since the termination of the court's jurisdiction or his unconditional release from the Division of Juvenile Justice Services, been convicted of a:

(A) felony; or

(B) misdemeanor involving moral turpitude;

(ii) no proceeding involving a felony or misdemeanor is pending or being instituted against the petitioner; and

(iii) a judgment for restitution entered by the court on the conviction for which the expungement is sought has been satisfied.

(3) The petitioner shall be responsible for service of the order of expungement to all affected state, county, and local entities, agencies, and officials. To avoid destruction or sealing of the records in whole or in part, the agency or entity receiving the expungement order shall only expunge all references to the petitioner's name in the records pertaining to the petitioner's adjudicated juvenile court cases.

(4) Upon the entry of the order, the proceedings in the petitioner's case shall be considered never to have occurred and the petitioner may properly reply accordingly upon any

inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon petition by the person who is the subject of the records, and only to persons named in the petition.

(5) The court may not expunge a juvenile court record if the record contains an adjudication of:

(a) Section 76-5-202, aggravated murder; or

(b) Section 76-5-203, murder.

(6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments as provided in Section 78-3a-502 may petition the court for expungement of the person's record if the person:

(i) has reached 18 years of age; and

(ii) has completed the conditions of the nonjudicial adjustments.

(b) The court shall, without a hearing, order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's nonjudicial adjustments.

Section 97. Section **78A-5-1106**, which is renumbered from Section 78-3a-906 is renumbered and amended to read:

~~[78-3a-906].~~        **78A-5-1106. Child support obligation when custody of a child is vested in an individual or institution.**

(1) When legal custody of a child is vested by the court in a secure youth corrections facility or any other state department, division, or agency other than the child's parents, or if the guardianship of the child has been granted to another party and an agreement for a guardianship subsidy has been signed by the guardian, the court shall order the parents, a parent, or any other obligated person to pay child support for each month the child is in custody. In the same proceeding the court shall inform the parents, a parent, or any other obligated person, verbally and in writing, of the requirement to pay child support in accordance with Title ~~[78]~~ **78B**, Chapter ~~[45]~~ **10**, Uniform Civil Liability for Support Act.

(2) If legal custody of a child is vested by the court in a secure youth corrections facility, or any other state department, division, or agency, the court may refer the establishment of a child support order to the Office of Recovery Services. The referral shall be sent to the Office of Recovery Services within three working days of the hearing. Support



obligation amounts shall be set by the Office of Recovery Services in accordance with Title [78] 78B, Chapter [45] 10, Uniform Civil Liability for Support Act.

(3) If referred to the Office of Recovery Services pursuant to Subsection (2), the court shall also inform the parties that they are required to contact the Office of Recovery Services within 30 days of the date of the hearing to establish a child support order and the penalty in Subsection (5) for failing to do so. If there is no existing child support order for the child, the liability for support shall accrue beginning on the 61st day following the hearing that occurs the first time the court vests custody of the child in a secure youth corrections facility, or any other state department, division, or agency other than his parents.

(4) If a child is returned home and legal custody is subsequently vested by the court in a secure youth corrections facility or any other state department, division, or agency other than his parents, the liability for support shall accrue from the date the child is subsequently removed from the home, including time spent in detention or sheltered care.

(5) (a) If the parents, parent, or other obligated person meets with the Office of Recovery Services within 30 days of the date of the hearing, the child support order may not include a judgment for past due support for more than two months.

(b) Notwithstanding Subsection (5)(a), the court may order the liability of support to begin to accrue from the date of the proceeding referenced in Subsection (1) if:

(i) the parents, parent, or any other person obligated fails to meet with the Office of Recovery Services within 30 days after being informed orally and in writing by the court of that requirement; and

(ii) the Office of Recovery Services took reasonable steps under the circumstances to contact the parents, parent, or other person obligated within the subsequent 30-day period to facilitate the establishment of the child support order.

(c) For purposes of Subsection (5)(b)(ii), the Office of Recovery Services shall be presumed to have taken reasonable steps if the office:

(i) has a signed, returned receipt for a certified letter mailed to the address of the parents, parent, or other obligated person regarding the requirement that a child support order be established; or

(ii) has had a documented conversation, whether by telephone or in person, with the parents, parent, or other obligated person regarding the requirement that a child support order

3997 be established.

3998 (6) In collecting arrears, the Office of Recovery Services shall comply with Section  
3999 62A-11-320 in setting a payment schedule or demanding payment in full.

4000 (7) Unless otherwise ordered, the parents or other person shall pay the child support to  
4001 the Office of Recovery Services. The clerk of the court, the Office of Recovery Services, or the  
4002 Department of Human Services and its divisions shall have authority to receive periodic  
4003 payments for the care and maintenance of the child, such as Social Security payments or  
4004 railroad retirement payments made in the name of or for the benefit of the child.

4005 (8) No court order under this section against a parent or other person shall be entered,  
4006 unless notice of hearing has been served within the state, a voluntary appearance is made, or a  
4007 waiver of service given. The notice shall specify that a hearing with respect to the financial  
4008 support of the child will be held.

4009 (9) An existing child support order payable to a parent or other obligated person shall  
4010 be assigned to the Department of Human Services as provided in Section 62A-1-117.

4011 (10) (a) Subsections (3) through (9) shall not apply if legal custody of a child is vested  
4012 by the court in an individual.

4013 (b) If legal custody of a child is vested by the court in an individual, the court may  
4014 order the parents, a parent, or any other obligated person to pay child support to the individual.  
4015 In the same proceeding the court shall inform the parents, a parent, or any other obligated  
4016 person, verbally and in writing, of the requirement to pay child support in accordance with  
4017 Title [78] 78B, Chapter [45] 10, Uniform Civil Liability for Support Act.

4018 Section 98. Section **78A-5-1107**, which is renumbered from Section 78-3a-907 is  
4019 renumbered and amended to read:

4020 ~~[78-3a-907]~~. **78A-5-1107. Transfer of continuing jurisdiction to other**  
4021 **district.**

4022 Jurisdiction over a minor on probation or under protective supervision, or of a minor  
4023 who is otherwise under the continuing jurisdiction of the court, may be transferred by the court  
4024 to the court of another district, if the receiving court consents, or upon direction of the chair of  
4025 the Board of Juvenile Court Judges. The receiving court has the same powers with respect to  
4026 the minor that it would have if the proceedings originated in that court.

4027 Section 99. Section **78A-5-1108**, which is renumbered from Section 78-3a-908 is

4028 renumbered and amended to read:

4029 ~~[78-3a-908].~~ **78A-5-1108.** New hearings authorized -- Grounds and  
4030 **procedure.**

4031 (1) A parent, guardian, custodian, or next friend of any child adjudicated under this  
4032 chapter, or any minor who is at least 18 years old, or adult affected by a decree in a proceeding  
4033 under this chapter, may at any time petition the court for a new hearing on the ground that new  
4034 evidence which was not known and could not with due diligence have been made available at  
4035 the original hearing and which might affect the decree, has been discovered.

4036 (2) If it appears to the court that there is new evidence which might affect its decree, it  
4037 shall order a new hearing, enter a decree, and make any disposition of the case warranted by all  
4038 the facts and circumstances and the best interests of the minor.

4039 (3) This section does not apply to a minor's case handled under the provisions of  
4040 Section ~~[78-3a-602]~~ 78A-5-702.

4041 Section 100. Section **78A-5-1109**, which is renumbered from Section 78-3a-909 is  
4042 renumbered and amended to read:

4043 ~~[78-3a-909].~~ **78A-5-1109.** Appeals.

4044 (1) An appeal to the Court of Appeals may be taken from any order, decree, or  
4045 judgment of the juvenile court.

4046 (2) Appeals of right from juvenile court orders related to abuse, neglect, dependency,  
4047 termination, and adoption proceedings, shall be taken within 15 days from entry of the order,  
4048 decree, or judgment appealed from. In addition, the notice of appeal must be signed by  
4049 appellant's counsel, if any, and by appellant, unless the appellant is a child or state agency. If  
4050 an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

4051 (3) If the parties are present in the courtroom, the court shall inform them of:

4052 (a) their right to appeal within the specified time limits;

4053 (b) the need for their signature on a notice of appeal in appeals from juvenile court  
4054 orders related to abuse, neglect, dependency, termination, and adoption proceedings; and

4055 (c) the need for parties to maintain regular contact with their counsel and to keep all  
4056 other parties and the appellate court informed of their whereabouts.

4057 (4) If the parties are not present in the courtroom, the court shall mail a written  
4058 statement containing the information provided in Subsection (3) to the parties at their last

4059 known address.

4060 (5) (a) The court shall inform the parties' counsel at the conclusion of the proceedings  
4061 that, if an appeal is filed, they must represent their clients throughout the appellate process  
4062 unless relieved of that obligation by the juvenile court upon a showing of extraordinary  
4063 circumstances.

4064 (b) Until the petition on appeal is filed, claims of ineffective assistance of counsel do  
4065 not constitute extraordinary circumstances. If a claim is raised by trial counsel or a party, it  
4066 must be included in the petition on appeal.

4067 (6) During the pendency of an appeal from juvenile court orders related to abuse,  
4068 neglect, dependency, termination, and adoption proceedings, parties shall maintain regular  
4069 contact with their counsel, if any, and keep all other parties and the appellate court informed of  
4070 their whereabouts.

4071 (7) In all other appeals of right, the appeal shall be taken within 30 days from the entry  
4072 of the order, decree, or judgment appealed from and the notice of appeal must be signed by  
4073 appellant's counsel, if any, or by appellant. The attorney general shall represent the state in all  
4074 appeals under this chapter.

4075 (8) Unless the juvenile court stays its order, the pendency of an appeal does not stay the  
4076 order or decree appealed from in a minor's case, unless otherwise ordered by the Court of  
4077 Appeals, if suitable provision for the care and custody of the minor involved is made pending  
4078 the appeal.

4079 (9) The name of the minor may not appear on the record on appeal.

4080 Section 101. Section **78A-5-1110**, which is renumbered from Section 78-3a-910 is  
4081 renumbered and amended to read:

4082 ~~[78-3a-910]~~. **78A-5-1110. Cooperation of political subdivisions and public**  
4083 **or private agencies and organizations.**

4084 Every county, municipality, and school district, the Division of Child and Family  
4085 Services, the Department of Health, the Division of Substance Abuse and Mental Health, the  
4086 State Board of Education, and state and local law enforcement officers, shall render all  
4087 assistance and cooperation within their jurisdiction and power to further the objects of this  
4088 chapter, and the juvenile courts are authorized to seek the cooperation of all agencies and  
4089 organizations, public or private, whose object is the protection or aid of minors.

Section 102. Section **78A-5-1111**, which is renumbered from Section 78-3a-913 is renumbered and amended to read:

~~[78-3a-913].~~        **78A-5-1111. Right to counsel -- Appointment of counsel for indigent -- Cost -- Court hearing to determine compelling reason to appoint a noncontracting attorney -- Rate of pay.**

(1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed that they have the right to be represented by counsel at every stage of the proceedings. They have the right to employ counsel of their own choice and if any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court as provided in Subsection (3). The court may appoint counsel without a request if it considers representation by counsel necessary to protect the interest of the minor or of other parties.

(b) The cost of appointed counsel for an indigent minor or other indigent party, including the cost of counsel and expense of appeal, shall be paid by the county in which the trial court proceedings are held. Counties may levy and collect taxes for these purposes.

(c) The court shall take into account the income and financial ability to retain counsel of the parents or guardian of a child in determining the indigency of the child.

(2) If the state or county responsible to provide legal counsel for an indigent under Subsection (1)(b) has arranged by contract to provide services, the court if it has received notice or a copy of such contract shall appoint the contracting attorney as legal counsel to represent that indigent.

(3) In the absence of contrary contractual provisions regarding the selection and appointment of parental defense counsel, the court shall select and appoint the attorney or attorneys if:

(a) the contract for indigent legal services is with multiple attorneys; or

(b) the contract is with an additional attorney or attorneys in the event of a conflict of interest.

(4) If the court considers the appointment of a noncontracting attorney to provide legal services to an indigent despite the existence of an indigent legal services contract and the court has a copy or notice of such contract, before the court may make the appointment, it shall:

(a) set the matter for a hearing;

(b) give proper notice to the attorney general and the Office of Child Welfare Parental

4121 Defense created in Section 63A-11-103; and

4122 (c) make findings that there is a compelling reason to appoint a noncontracting attorney  
4123 before it may make such appointment.

4124 (5) The indigent's mere preference for other counsel shall not be considered a  
4125 compelling reason justifying the appointment of a noncontracting attorney.

4126 (6) The court may order a minor, parent, guardian, or custodian for whom counsel is  
4127 appointed and the parents or guardian of any child for whom counsel is appointed to reimburse  
4128 the county for the cost of appointed counsel.

4129 Section 103. Section **78A-5-1112**, which is renumbered from Section 78-3a-914 is  
4130 renumbered and amended to read:

4131 **~~[78-3a-914].~~ 78A-5-1112. Exchange of information with agency or**  
4132 **institution having legal custody -- Transfer of minor to state prison or other adult facility**  
4133 **prohibited.**

4134 (1) Whenever legal custody of a minor is vested in an institution or agency, the court  
4135 shall transmit with the court order copies of the social study, any clinical reports, and other  
4136 information pertinent to the care and treatment of the minor. The institution or agency shall  
4137 give the court any information concerning the minor that the court may at any time require.

4138 (2) The Division of Juvenile Justice Services or any other institution or agency to  
4139 whom a minor is committed under Section ~~[78-3a-118]~~ 78A-5-117 may not transfer custody of  
4140 the minor to the state prison or any other institution for the correction of adult offenders.

4141 Section 104. Section **78A-5-1201**, which is renumbered from Section 78-57-101 is  
4142 renumbered and amended to read:

4143 **Part 12. Utah Youth Court Diversion Act**

4144 **~~[78-57-101].~~ 78A-5-1201. Title.**

4145 This ~~[chapter]~~ part is known as the "Utah Youth Court Diversion Act."

4146 Section 105. Section **78A-5-1202**, which is renumbered from Section 78-57-102 is  
4147 renumbered and amended to read:

4148 **~~[78-57-102].~~ 78A-5-1202. Definitions.**

4149 (1) "Adult" means a person 18 years of age or older.

4150 (2) "Gang activity" means any criminal activity that is conducted as part of an  
4151 organized youth gang. It includes any criminal activity that is done in concert with other gang

4152 members, or done alone if it is to fulfill gang purposes. "Gang activity" does not include  
4153 graffiti.

4154 (3) "Minor offense" means any unlawful act that is a status offense or would be a class  
4155 B or C misdemeanor, infraction, or violation of a municipal or county ordinance if the youth  
4156 were an adult. "Minor offense" does not include:

4157 (a) class A misdemeanors;

4158 (b) felonies of any degree;

4159 (c) any offenses that are committed as part of gang activity;

4160 (d) any of the following offenses which would carry mandatory dispositions if referred  
4161 to the juvenile court under Section ~~[78-3a-506]~~ 78A-5-606:

4162 (i) a second violation of Section 32A-12-209, Unlawful Purchase, Possession or  
4163 Consumption by Minors -- Measurable Amounts in Body;

4164 (ii) a violation of Section 41-6a-502, Driving Under the Influence;

4165 (iii) a violation of Section 58-37-8, Controlled Substances Act;

4166 (iv) a violation of Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

4167 (v) a violation of Title 58, Chapter 37b, Imitation Controlled Substances Act; or

4168 (vi) a violation of Section 76-9-701, Intoxication; or

4169 (e) any offense where a dangerous weapon, as defined in Subsection 76-1-601(5), is  
4170 used in the commission of the offense.

4171 (4) "Sponsoring entity" means any political subdivision of the state, including a school  
4172 or school district, juvenile court, law enforcement agency, prosecutor's office, county, city, or  
4173 town.

4174 (5) "Status offense" means a violation of the law that would not be a violation but for  
4175 the age of the offender.

4176 (6) "Youth" means a person under the age of 18 years or who is 18 but still attending  
4177 high school.

4178 Section 106. Section **78A-5-1203**, which is renumbered from Section 78-57-103 is  
4179 renumbered and amended to read:

4180 ~~[78-57-103]~~. **78A-5-1203. Youth Court -- Authorization -- Referral.**

4181 (1) Youth Court is a diversion program which provides an alternative disposition for  
4182 cases involving juvenile offenders in which youth participants, under the supervision of an

adult coordinator, may serve in various capacities within the courtroom, acting in the role of jurors, lawyers, bailiffs, clerks, and judges.

(a) Youth who appear before youth courts have been identified by law enforcement personnel, school officials, a prosecuting attorney, or the juvenile court as having committed acts which indicate a need for intervention to prevent further development toward juvenile delinquency, but which appear to be acts that can be appropriately addressed outside the juvenile court process.

(b) Youth Courts may only hear cases as provided for in this ~~chapter~~ part.

(c) Youth Court is a diversion program and not a court established under the Utah Constitution, Article VIII.

(2) Any person may refer youth to a Youth Court for minor offenses. Once a referral is made, the case shall be screened by an adult coordinator to determine whether it qualifies as a Youth Court case.

(3) Youth Courts have authority over youth:

(a) referred for a minor offense or offenses, or who are granted permission for referral under this ~~chapter~~ part;

(b) who, along with a parent, guardian, or legal custodian, voluntarily and in writing, request Youth Court involvement;

(c) who admit having committed the referred offense;

(d) who, along with a parent, guardian, or legal custodian, waive any privilege against self-incrimination and right to a speedy trial; and

(e) who, along with their parent, guardian, or legal custodian, agree to follow the Youth Court disposition of the case.

(4) Except with permission granted under Subsection (5), Youth Courts may not exercise authority over youth who are under the continuing jurisdiction of the juvenile court for law violations, including any youth who may have a matter pending which has not yet been adjudicated. Youth Courts may, however, exercise authority over youth who are under the continuing jurisdiction of the juvenile court as set forth in this Subsection (4) if the offense before the Youth Court is not a law violation, and the referring agency has notified the juvenile court of the referral.

(5) Youth Courts may exercise authority over youth described in Subsection (4), and



over any other offense with the permission of the juvenile court and the prosecuting attorney in the county or district that would have jurisdiction if the matter were referred to juvenile court.

(6) Permission of the juvenile court may be granted by a probation officer of the court in the district that would have jurisdiction over the offense being referred to Youth Court.

(7) Youth Courts may decline to accept a youth for Youth Court disposition for any reason and may terminate a youth from Youth Court participation at any time.

(8) A youth or the youth's parent, guardian, or custodian may withdraw from the Youth Court process at any time. The Youth Court shall immediately notify the referring source of the withdrawal.

(9) The Youth Court may transfer a case back to the referring source for alternative handling at any time.

(10) Referral of a case of Youth Court may not prohibit the subsequent referral of the case to any court.

Section 107. Section **78A-5-1204**, which is renumbered from Section 78-57-104 is renumbered and amended to read:

**~~[78-57-104].~~            78A-5-1204. Parental involvement -- Victims -- Restitution.**

(1) Every youth appearing before the Youth Court shall be accompanied by a parent, guardian, or legal custodian.

(2) Victims shall have the right to attend hearings and be heard.

(3) Any restitution due a victim of an offense shall be made in full prior to the time the case is completed by the Youth Court. Restitution shall be agreed upon between the youth and victim.

Section 108. Section **78A-5-1205**, which is renumbered from Section 78-57-105 is renumbered and amended to read:

**~~[78-57-105].~~            78A-5-1205. Dispositions.**

(1) Youth Court dispositional options include:

(a) community service;

(b) participation in law-related educational classes, appropriate counseling, treatment, or other educational programs;

(c) providing periodic reports to the Youth Court;

(d) participating in mentoring programs;

4245 (e) participation by the youth as a member of a Youth Court;  
4246 (f) letters of apology;  
4247 (g) essays; and  
4248 (h) any other disposition considered appropriate by the Youth Court and adult  
4249 coordinator.

4250 (2) Youth Courts may not impose a term of imprisonment or detention and may not  
4251 impose fines.

4252 (3) Youth Court dispositions shall be completed within 180 days from the date of  
4253 referral.

4254 (4) Youth Court dispositions shall be reduced to writing and signed by the youth and a  
4255 parent, guardian, or legal custodian indicating their acceptance of the disposition terms.

4256 (5) Youth Court shall notify the referring source if a participant fails to successfully  
4257 complete the Youth Court disposition. The referring source may then take any action it  
4258 considers appropriate.

4259 Section 109. Section **78A-5-1206**, which is renumbered from Section 78-57-106 is  
4260 renumbered and amended to read:

4261 ~~**[78-57-106].**~~ **78A-5-1206. Liability.**

4262 (1) A person or entity associated with the referral, evaluation, adjudication, disposition,  
4263 or supervision of matters under this ~~[chapter]~~ part may not be held civilly liable for any injury  
4264 occurring to any person performing community service or any other activity associated with a  
4265 certified Youth Court unless the person causing the injury acted in a willful or wanton manner.

4266 (2) Persons participating in a certified Youth Court shall be considered to be volunteers  
4267 for purposes of Workers' Compensation and other risk-related issues.

4268 Section 110. Section **78A-5-1207**, which is renumbered from Section 78-57-107 is  
4269 renumbered and amended to read:

4270 ~~**[78-57-107].**~~ **78A-5-1207. Fees.**

4271 (1) Youth Courts may require that the youth pay a reasonable fee, not to exceed \$30, to  
4272 participate in Youth Court. This fee may be reduced or waived by the Youth Court in exigent  
4273 circumstances. This fee shall be paid to and accounted for by the sponsoring entity.

4274 (2) Fees for classes, counseling, treatment, or other educational programs that are the  
4275 disposition of the Youth Court are the responsibility of the participant.

Section 111. Section **78A-5-1208**, which is renumbered from Section 78-57-108 is renumbered and amended to read:

**~~[78-57-108].~~            78A-5-1208. Youth Court Board -- Membership -- Responsibilities.**

(1) The Utah attorney general's office shall provide staff support and assistance to a Youth Court Board comprised of the following:

- (a) the Utah attorney general or his designee;
- (b) one member of the Utah Prosecution Council;
- (c) one member from the Board of Juvenile Court Judges;
- (d) the juvenile court administrator or his designee;
- (e) one person from the Office of Juvenile Justice and Delinquency Prevention;
- (f) the state superintendent of education or his designee;
- (g) two representatives from Youth Courts based primarily in schools;
- (h) two representatives from Youth Courts based primarily in communities;
- (i) one member from the law enforcement community; and
- (j) one member from the community at large.

(2) The members selected to fill the positions in Subsections (1)(a) through (f) shall jointly select the members to fill the positions in Subsections (1)(g) through (j).

(3) Members shall serve two-year staggered terms beginning July 1, 1999, except the initial terms of the members designated by Subsections (1)(a), (c), (e), and (i), and one of the members from Subsections (1)(g) and (h) shall serve one-year terms, but may be reappointed for a full two-year term upon the expiration of their initial term.

(4) The Youth Court Board shall meet at least quarterly to:

- (a) set minimum standards for the establishment of Youth Courts, including an application process, membership and training requirements, and the qualifications for the adult coordinator;
- (b) review certification applications; and
- (c) provide for a process to recertify each Youth Court every three years.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Youth Court Board shall make rules to accomplish the requirements of Subsection (3).

(6) The Youth Court Board may deny certification or recertification, or withdraw the

4307 certification of any Youth Court for failure to comply with program requirements.

4308 (7) (a) Members shall receive no compensation or benefits for their services, but may  
4309 receive per diem and expenses incurred in the performance of the member's official duties at  
4310 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

4311 (b) Members may decline to receive per diem and expenses for their service.

4312 (8) The Youth Court Board shall provide a list of certified Youth Courts to the Board  
4313 of Juvenile Court Judges, all law enforcement agencies in the state, all school districts, and the  
4314 Utah Prosecution Council by December 31 of each year.

4315 Section 112. Section **78A-5-1209**, which is renumbered from Section 78-57-109 is  
4316 renumbered and amended to read:

4317 ~~[78-57-109].~~ **78A-5-1209. Establishing a Youth Court -- Sponsoring entity**  
4318 **responsibilities.**

4319 (1) Youth Courts may be established by a sponsoring entity or by a private nonprofit  
4320 entity which contracts with a sponsoring entity.

4321 (2) The sponsoring entity shall:

4322 (a) oversee the formation of the Youth Court;

4323 (b) provide assistance with the application for certification from the Youth Court  
4324 Board; and

4325 (c) provide assistance for the training of Youth Court members.